2003-2004

SENATE
COMMERCE

COMMITTEE
MINUTES

MEMBERSHIP

SENATE COMMERCE COMMITTEE
2003-2004 Biennium

Senator R.C. Soles, Chair
Room 2022, LB 733-5963
Joan Leatherman, Janet Blalock

Senator David Hoyle, Vice Chair
Room 300A, LOB 733-5734
Penny Williams

Senator Tony Rand, Vice Chair
Room 300C, LOB 733-9892
Evelyn Costello

Senator Philip Berger, Ranking Minority
Room 1121, LB
Barbara Eldridge

Senator Tom Apodaca
Room 1119, LB
Nancy Pulley

Senator Patrick Ballantine
Room 1127, LB 715-2525
Luci Johnson

Senator Robert Carpenter
Room 517, LOB 733-5875
Helen Carpenter

Senator Walter Dalton
Room 523, LOB
Mona Fitzgerald

Senator Katie Dorsett
Room 2106, LB
Joyce Hodge

Senator Jim Forrester
Room 1129, LB
Mary Watson

Senator Virginia Foxx
Room 1120, LB 733-5743
Janet Black

Senator Linda Garrou
Room 627, LOB
Gail Bishop

Senator Kay Hagan
Room 410, LOB
Susan Hamilton

Senator John Kerr
Room 526, LOB 733-5621
Evelyn Hartsell

Senator Vernon Malone
Room 2113, LB 733-5880
Claudette Howell

Senator Steve Metcalf
Room 300B, LOB 733-5707
Anne Wilson

Senator Tony Moore
Room 622, LOB
June Kendall

Senator Robert Pittenger
Room 521, LOB
Melissa Mitchell

Senator William Purcell
Room 625, LOB
Lorraine Blake

Senator Robert Rucho
Room 1113, LB 733-5650
Helen Long

Senator Larry Shaw
Room 621, LOB 733-9349
Barbara Lee

Senator R.B. Sloan
Room 406, LOB
Samantha Edwards

2003-2004 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0070	Justice	PENDER SUBDIVISION REGULATION.	*SR	Ch. SL 2003-245	03-27-03	06-11-03
H0116	Hill	FARM MACHINERY LAW/ NOTICE OF TERMINATION.	*SR	Ch. SL 2003-195	05-01-03	06-03-03
H0173	Howard	COSMETIC ART/ CONTINUING ED/PENALTY CHANGE.	*S	Ref to Commerce. If fav, re-ref to Finance	07-14-03	
H0208	Wright	MANAGED CARE/HLTH BENEFITS CLARIFYING-AB.	*S	Re-ref Com On Rules and Operations of the Senate	05-05-03	05-06-03
H0270=	Setzer	INSURANCE TECHNICAL CORRECTIONS.-AB	SR	Ch. SL 2003-221	04-03-03	06-05-03
H0276	Setzer	INSURANCE FINANCIAL AMENDMENTS OMNIBUS.-AB	*SR	Ch. SL 2003-212	04-23-03	05-28-03
H0283	Nye	PROPERTY AND CASUALTY INSURANCE OMNIBUS.-AB	*SR	Ch. SL 2003-290	04-28-03	05-21-03
H0328	Howard	AMEND REAL ESTATE LICENSING LAWS/FEES.-AB	*S	Pres. To Gov. 7/ 19/2003	04-23-03	05-22-03
H0339=	Wright	LIFE AND HEALTH INSURANCE OMNIBUS.-AB	*S	Conf Com Appointed	05-05-03	06-18-03
H0356=	Tolson	REMOVE SUNSET/ MUNICIPAL ELECTRIC SERVICE.	S	Ref To Com On Commerce	03-26-03	
H0357	Barnhart	NO CREDIT CARD NUMBER ON RECEIPTS.	*SR	Ch. SL 2003-206	04-23-03	05-28-03
H0358	Starnes	INCREASE DAMAGE LIMITS FOR MV ACCIDENTS.	*SR	Ch. SL 2003-137	04-07-03	05-20-03
H0475	Alexander	REGISTRATION OF BIRTH & DEATH CERTIFICATES.	SR	Ch. SL 2003-60	03-26-03	05-13-03
H0560	Holliman	DISAPPROVE CERTAIN LIFE INSURANCE RULES.	*SR	Ch. SL 2003-143	04-28-03	05-27-03
H0609=	Baker	ENHANCE AMUSEMENT DEVICE SAFETY.	*SR	Ch. SL 2003-170	04-30-03	05-27-03
H0635	Rayfield	INVISIBLE FENCE SYSTEMS--SIGNS REQUIRED.	*S	Ref To Com On Commerce	05-05-03	
H0744=	Hackney	MANAGED CARE PATIENT ASSISTANCE.	SR	Ch. SL 2003-105	04-22-03	05-20-03
H0829=	Holliman	ANNUITY NONFORFEITURE RATE CHANGE.	SR	Ch. SL 2003-144	04-28-03	05-27-03
H0864=	Brubaker	GUARANTEED ENERGY SAVINGS CONTRACT EFFICIENCY.	*SR	Ch. SL 2003-138	04-29-03	05-27-03
H0888	Moore	PURCHASE FLEX/SCH TRANSPORTATION.	S	Re-ref Com On Rules and Operations of the Senate	05-05-03	05-06-03
H0892	Saunders	WORKERS COMP./CARRIER DRIVERS.	*SR	Ch. SL 2003-235	05-05-03	06-04-03
H0895	Gibson	TEMP. RULES FOR GEN. CONTRS BOARD/BIDDING.	S	Ref To Com On Commerce	04-29-03	
H0900	Gibson	RESTAURANT ABC PERMITS.	SR	Ch. SL 2003-135	04-28-03	05-27-03

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0913	Brubaker	UNIVERSAL TELEPHONE SERVICE PROVIDER.	SR	Ch. SL 2003-99	05-01-03	05-20-03
H0964	Warner	FURNITURE REQUIREMENTS CONTRACTS.	S	Ref To Com On Commerce	05-05-03	
H0974	Hill	PROHIBIT STATE PURCHASE OF RECONSTITUTED MILK.	*S	Pres. To Gov. 7/17/2003	05-05-03	06-05-03
H0986	Lucas	MV INSURER TO DISCLOSE FINANCIAL INTEREST.	*S	Pres. To Gov. 7/19/2003	05-05-03	06-09-03
H0994	K. Williams	PUBLIC WORKS EXEMPTION.	*SR	Ch. SL 2003-305	04-29-03	06-04-03
H0994	K. Williams	PUBLIC WORKS EXEMPTION.	*SR	Ch. SL 2003-305	06-11-03	06-18-03
H0999=	Hackney	TONER/INKJET CARTRIDGES.	*S	Pres. To Gov. 7/17/2003	05-01-03	07-09-03
H1023	Goodwin	UNINSURED/ UNDERINSURED MOTORIST COVERAGE.	*SR	Ch. SL 2003-311	05-01-03	06-16-03
H1065	L. Allen	REDEVELOPMENT COMM. PROPERTY CONVEYANCE.	*SR	Ch. SL 2003-66	05-01-03	05-13-03
H1066	Alexander	HEALTH PLANS DISCLOSE FEE SCHEDULES/CODING.	*S	Pres. To Gov. 7/18/2003	05-05-03	07-15-03
H1088	Barnhart	CONSUMERS' RIGHT-TO-KNOW ACT.	*S	Ref To Com On Commerce	05-05-03	
H1093	Culpepper	TECHNICAL AMENDMENTS/ INSURANCE GUARANTY ASSOC.	*SR	Ch. SL 2003-167	05-05-03	05-27-03
H1107	C. Wilson	UTILIZ. REVIEW & GRIEVANCE AMENDMENTS.	*S	Ref To Com On Commerce	05-05-03	
H1129	Fox	2003 OMNIBUS LABOR LAW CHANGES.	*SR	Ch. SL 2003-308	04-29-03	06-05-03
H1140	Allred	NORTH CAROLINA 'QUICK CLEARANCE' ACT.	*SR	Ch. SL 2003-310	05-01-03	06-04-03
H1152	Cole	INSTALLING MV PARTS AND AIR BAGS.	*S	Ref To Com On Commerce	05-05-03	
H1181	Goodwin	WORKPLACE SAFETY/ REINSPECTIONS.	*SR	Ch. SL 2003-174	05-05-03	06-03-03
H1182	Goodwin	EXPAND USURY EXEMPTION.	*S	Pres. To Gov. 7/19/2003	05-05-03	06-03-03
H1201	Allred	CONSECUTIVE WATER SYSTEMS/MANUFACTURED HOMES.	SR	Ch. SL 2003-173	05-01-03	06-03-03
H1203=	Gibson	AMEND MOTOR FUEL MARKETING ACT.	*S	Ref to Judiciary I. If fav, re-ref to Commerce. If fav, re-ref to Finance	05-05-03	05-06-03
H1213	Culpepper	REGULATE DEFERRED DEPOSIT.	*S	Re-ref Com On Finance	05-05-03	05-06-03
H1213	Culpepper	REGULATE DEFERRED DEPOSIT.	*S	Re-ref Com On Finance	05-27-03	06-18-03
$ S0050	**Patrick J. Balla**	**HIGH-RISK INSURANCE POOL.**	**S**	**Ref to Commerce. If fav, re-ref to Appropriations/**	**02-17-03**	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				Base Budget		
S0107	Robert C. Carpen	MV INSURERS-NO MANDATE ON NONORIGINAL PARTS.	*S	Ref To Com On Judiciary III	02-20-03	04-17-03
S0108=	Robert C. Carpen	NO COMPREHENSIVE DEDUCTIBLE ON WINDSHIELDS.	S	Ref To Com On Commerce	02-20-03	
S0109=	Robert C. Carpen	MOTOR VEHICLE GLASS REPAIR.	*S	Ref To Com On Judiciary III	02-20-03	04-17-03
S0290	Katie G. Dorsett	GREENSBORO MINIMUM HOUSING CODES.	*SR	Ch. SL 2003-76	03-05-03	04-21-03
S0327	R. C. Soles, Jr.	CONFIRMING JOSEPH A. SMITH JR./COMM'R OF BANKS	SR	Ch. Res 2003-30	03-10-03	03-18-03
S0338=	Joe Sam Queen	REMOVE SUNSET/ MUNICIPAL ELECTRIC SERVICE.	SR	Ch. SL 2003-24	03-10-03	03-25-03
S0346=	William R. Purce	REPEAL LONG-TERM CARE INS. TAX CREDIT SUNSET.	S	Ref To Com On Commerce	03-11-03	
S0355=	Richard Stevens	WAKE FOREST FORCE LIMIT.	SR	Ch. SL 2003-32	03-11-03	04-01-03
S0378	Charlie S. Danne	311 SERVICE.	S	Ref To Com On Public Utilities	03-12-03	04-24-03
S0437	David W. Hoyle	GEN. CONTRS. BOARD/ BIDDING.	*SR	Ch. SL 2003-231	03-17-03	04-08-03
S0469	Fletcher L. Hart	UNFAIR TRADE PRACTICES/LIFE INSURANCE SALES.	*S	Re-ref Com On Insurance	03-20-03	04-17-03
S0501=	John H. Kerr III	ENHANCE ELEVATOR & AMUSEMENT DEVICE SAFETY.	S	Ref To Com On Commerce	03-24-03	
S0506	Tony Rand	DISAPPROVE CERTAIN LIFE INSURANCE RULES.	S	Ref To Com On Commerce	03-24-03	
S0510	Eric Miller Reev	SAFETY AT AUTOMATIC TELLER MACHINES.	*S	Ref To Com On Financial Institutions	03-24-03	04-16-03
S0513	Philip E. Berger	ADJUST WORKERS' COMP. AWARD SCHEDULE.	S	Ref To Com On Commerce	03-24-03	
S0521	Tony Rand	PYROTECHNIC REGULATION ENHANCED.	*SR	Ch. SL 2003-298	03-25-03	04-21-03
S0536	David W. Hoyle	SMALL BUSINESS OMBUDSMAN OFFICE.	S	Ref to Commerce. If fav, re-ref to Appropriations/ Base Budget	03-26-03	
S0540	Fletcher L. Hart	APA RULES/ECONOMIC IMPACT REVIEW.	S	Ref To Com On Commerce	03-26-03	
S0550=	Kay R. Hagan	CREMATORY ACT CHANGES.	*S	Pres. To Gov. 7/ 18/2003	03-27-03	06-09-03
S0557	David W. Hoyle	REQUIRE DRUG TEST BEFORE LICENSURE/CAB DRIVER.	SR	Ch. SL 2003-65	03-27-03	04-15-03
S0558=	David W. Hoyle	DISCLOSURE OF PRIOR MV DAMAGE.	*SR	Ch. SL 2003-258	03-27-03	04-17-03
S0559=	David W. Hoyle	CLARIFY MV DEALER FRANCHISE LAWS.	*SR	Ch. SL 2003-113	03-27-03	04-17-03

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S0560	Tony Rand	AMEND REAL ESTATE LICENSE LAWS.	S	Ref To Com On Commerce	03-27-03	
S0573=	Daniel G. Clodfe	MANAGED CARE PATIENT ASSISTANCE.	S	Ref To Com On Commerce	03-31-03	
S0589=	Eleanor Kinnaird	LIVABLE STATE MINIMUM WAGE.	S	Ref To Com On Commerce	03-31-03	
S0590	Eleanor Kinnaird	MORATORIUM ON SOFT DRINK CONTRACTS/ SCHOOLS.	S	Ref to Commerce. If fav, re-ref to Rules and Operations of the Senate	03-31-03	
S0595=	Philip E. Berger	CONSCIENCE PROTECTION/ CONTRACEPTIVES.	S	Ref To Com On Commerce	03-31-03	
S0603=	William R. Purce	LIFE AND HEALTH INSURANCE OMNIBUS.	S	Ref To Com On Commerce	03-31-03	
S0607	William R. Purce	MNGD CARE/HEALTH BENEFITS CLARIFYING CHANGES.	S	Ref To Com On Commerce	03-31-03	
S0613	Fletcher L. Hart	CONTINUING CARE RET./ TECH. CHANGES.	S	Ref To Com On Commerce	03-31-03	
S0614=	Fletcher L. Hart	INSURANCE TECHNICAL CORRECTIONS.	S	Ref To Com On Commerce	03-31-03	
S0620=	Walter H. Dalton	PURCHASING FLEXIBILITY FOR SCHOOLS.	*SR	Ch. SL 2003-147	03-31-03	04-21-03
S0631	Daniel G. Clodfe	SELF-INSURED LOCALITIES.	S	Ref To Com On Commerce	04-01-03	
S0632=	Daniel G. Clodfe	WORKERS' COMP./ AGRICULTURAL EMPLOYMENT.	S	Ref To Com On Commerce	04-01-03	
S0655	Stephen M. Metca	AMEND LOCKSMITH ACT/ CRIMINAL CHECKS/FEES.	*S	Pres. To Gov. 7/ 16/2003	04-01-03	05-14-03
S0658	R. C. Soles, Jr.	APPELLATE PROCEDURE/ STATE BANKING COMMISSION.	*SR	Ch. SL 2003-63	04-01-03	04-14-03
S0661	Eric Miller Reev	PRISONER HEALTH INFORMATION/EMS CHANGES.	*S	Ratified	04-01-03	05-01-03
S0670	Fletcher L. Hart	CREDITABLE SERVICE/ WORKERS' COMPENSATION.	S	Re-ref Com On Pensions & Retirement and Aging	04-02-03	04-24-03
S0673	David W. Hoyle	CLARIFY FIRE TAX CALCULATION.-AB	S	Re-ref Com On Finance	04-02-03	04-15-03
$ S0675	**David W. Hoyle**	**CODE OFFICIALS PROFESSIONAL QUALIFICATIONS.**	**S**	**Ref to Commerce. If fav, re-ref to Appropriations/ Base Budget**	**04-02-03**	
S0676	David W. Hoyle	REVISE THE BANKING LAWS OF NORTH CAROLINA.	*S	Re-ref Com On Finance	04-02-03	04-15-03
S0685=	David F. Weinste	CONFORM MORTGAGE LENDING LAWS.	S	Ref To Com On Commerce	04-02-03	
S0691	Scott Thomas	PROPERTY AND CASUALTY INSURANCE OMNIBUS.	S	Ref To Com On Commerce	04-02-03	
S0743=	Jeanne H. Lucas	ENERGY ASSISTANCE ACT.	S	Ref To Com On	04-03-03	

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				Commerce		
S0750	Kay R. Hagan	INCREASE PERMIT LIMIT FOR BREWERIES.	*S	Pres. To Gov. 7/ 20/2003	04-03-03	04-23-03
S0755=	Linda Garrou	SUPPLEMENTAL INSURANCE FOR RETIREES.	S	Ref To Com On Commerce	04-03-03	
S0758	Tony Rand	MORE SM. EMPLOYER HEALTH INS. AVAILABLE.	*S	Ref To Com On Insurance	04-03-03	04-23-03
S0767	Tom Apodaca	CONTRACT SURETY BONDS.	S	Ref To Com On Commerce	04-03-03	
S0769	Scott Thomas	BEACH PLAN HOMEOWNERS POLICY RATE SETTING.	*SR	Ch. SL 2003-158	04-03-03	04-24-03
S0770	Scott Thomas	INSURERS REVEAL FINANCIAL INT IN REPAIRERS.	S	Ref To Com On Commerce	04-03-03	
S0771	Scott Thomas	CREDIT SCORING LIMITATION.	*SR	Ch. SL 2003-216	04-03-03	04-23-03
S0773	Walter H. Dalton	COMM. COLL. FACILITY/ PUBLIC-PRIVATE P'SHIP.	*SR	Ch. SL 2003-286	04-03-03	04-14-03
S0775	Walter H. Dalton	PRELITIGATION MEDIATION OF INSURANCE CLAIMS.	*SR	Ch. SL 2003-307	04-03-03	04-14-03
S0777	Virginia Foxx	AMEND DEALER LICENSING LAW.	*SR	Ch. SL 2003-254	04-03-03	04-15-03
S0782=	Charlie S. Danne	HEALTH INSURANCE COVERAGE/EARLY INTERVENTION.	S	Ref To Com On Commerce	04-03-03	
S0785=	Fletcher L. Hart	ANNUITY NONFORFEITURE RATE CHANGE.	S	Ref To Com On Commerce	04-03-03	
S0787=	Eric Miller Reev	NO MOTOR FUEL SALES LIMITS.	S	Ref To Com On Commerce	04-03-03	
S0789	Jerry W. Tillman	MOTOR VEHICLE REPAIRS/ UNFAIR TRADE PRACTICES.	S	Ref To Com On Commerce	04-03-03	
S0799	David W. Hoyle	TELEPHONE SOLICITATIONS/CONSENT TO CHARGE.	*S	Ref To Com On Public Utilities	04-03-03	04-16-03
S0801	David W. Hoyle	INVESTIGATE CERTAIN TELECOM. ACTIVITIES.	*S	Ref To Com On Public Utilities	04-03-03	04-24-03
S0803	Tony Rand	CASINO NIGHTS.	S	Ref To Com On Commerce	04-03-03	
S0812	Tony Rand	SCHOOL-RELATED LICENSE SUSPENSION/ AUTO INS.	S	Ref To Com On Commerce	04-03-03	
S0813	Tony Rand	CONTROLLER'S FEE.	*S	Ref To Com On Finance	04-03-03	04-16-03
S0814	Tony Rand	CLARIFY COMPET. TELECOMMUNICATIONS STATUTES.	*SR	Ch. SL 2003-91	04-14-03	04-29-03
S0842=	Fern Shubert	PRESC. DRUG DISCOUNTS/ UNINSURED ELDERLY.	S	Ref To Com On Commerce	04-03-03	
S0846=	Wib Gulley	SOLAR ENERGY SYSTEMS.	*S	Re-ref Com On Judiciary IV	04-03-03	04-23-03
S0847	Wib Gulley	TENANT LATE FEES.	*S	Pres. To Gov. 7/ 17/2003	04-03-03	04-21-03
S0849=	Wib Gulley	NET METERING.	S	Ref To Com On	04-03-03	

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				Commerce		
S0861=	Daniel G. Clodfe	ADOPT INTERNATIONAL BUILDING CODE.	S	Ref To Com On Commerce	04-03-03	
S0872	Scott Thomas	UNWANTED TELEPHONE SOLICITATIONS.	*S	Pres. To Gov. 7/ 20/2003	04-03-03	04-29-03
S0887	Robert C. Carpen	OVARIAN CANCER DET./ HIGH RISK WOMEN.	*SR	Ch. SL 2003-223	04-03-03	04-23-03
S0900	Hugh Webster	TELEPHONE SOLICITATIONS/ INCREASE PENALTIES.	S	Ref to Commerce. If fav, re-ref to Finance	04-03-03	
S0905	Joe Sam Queen	RAISE STATE MINIMUM WAGE.	S	Ref To Com On Commerce	04-03-03	
S0913=	Daniel G. Clodfe	STREAMLINE BUILDING CODE.	S	Ref To Com On Commerce	04-03-03	
S0947	David W. Hoyle	CREDIT CARD NUMBERS ON RECEIPTS.	S	Ref To Com On Commerce	04-03-03	
S0963	A. B Swindell	PREVENT PRICE GOUGING DURING DISASTERS.	*S	Pres. To Gov. 7/ 17/2003	04-03-03	04-24-03
S0966	Walter H. Dalton	INSURANCE PERSONAL INFO. SAFEGUARDS.	*SR	Ch. SL 2003-262	04-03-03	04-10-03
S0967	Walter H. Dalton	INSURANCE FINANCIAL AMENDMENTS OMNIBUS.	S	Ref To Com On Commerce	04-03-03	
S0971=	Eleanor Kinnaird	TONER CARTRIDGE REUSE PROHIBITIONS VOID.	S	Ref To Com On Commerce	04-03-03	
S0991	Eric Miller Reev	CONSUMER'S RIGHT TO KNOW AND ACT.	*S	Ref to the Com on State Government and, if favorable, to the Com on Judiciary II	04-03-03	04-29-03
S0995	Linda Garrou	SCHOOL CONSTRUCTION/ REPAIR FLEXIBILITY.	*SR	Ch. SL 2003-269	04-03-03	04-17-03
S1021=	R. C. Soles, Jr.	CONFIRM JO ANNE SANFORD UTILITIES COMMISSION.	SR	Ch. Res 2003-16	05-07-03	05-20-03

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AGENDA

SENATE COMMERCE COMMITTEE
Tuesday, March 18, 2003 at 11:00 a.m.
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Introductions of Members and Staff

III. Bills

• SJR 327	Confirmation of Joseph Smith to be Commissioner of Banks	Sen. Soles
• SB 338	Remove Sunset/Municipal Electric Service	Sen. Queen

IV. Presentation on State of Banking in N.C. and an Overview of the Office of Commissioner of Banks

V. Other Business

VI. Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, March 18, 2003 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, March 18, 2003, in Room 1027 of the Legislative Building. Fourteen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles opened the meeting by introducing the pages and the committee staff, and by having each member present briefly introduce him or herself. He explained that, over the next few weeks, the committee would be having presentations from heads of the departments that oversee the state government activities covered by the Commerce Committee as well as considering the bills assigned to the committee.

Senator Soles introduced Mr. Franklin Freeman, Senior Assistant to the Governor for Governmental Affairs, to speak to SJR 327, Confirming Joseph A. Smith, Jr., as Commissioner of Banks (see attached bill, bill explanation, and information about Mr. Smith). Mr. Freeman in turn introduced, on behalf of Governor Easley, the Governor's nominee. Mr. Smith has served as North Carolina's Commissioner of Banks since June of 2002 to complete the unexpired term of the former Banking Commissioner, and is currently being appointed for a full four-year term.

Mr. Smith introduced his staff that was present at the meeting:

- Mr. David Hansen, Deputy Commissioner
- Mr. W. Reitzel Deaton, Director of Consumer Financial Activities
- Ms. Nancy Rhue, Chief Financial Officer
- Mr. George King, former Ombudsman and new Director of the Mortgage Division
- Ms. Irene Smith, Executive Assistant

Senator Soles asked if there were any present to speak to the nomination. Mr. Paul Stock, representing the North Carolina Bankers Association, spoke strongly in favor of confirmation. Senator Shaw also spoke strongly in favor of Mr. Smith's confirmation. Senator Rand moved for a favorable report of the resolution. The motion carried unanimously.

Mr. Smith was asked to make remarks to the Committee describing the activities of the Commission and changes that have been made since he took office. Senator Soles asked for additional information about trust companies. Mr. Smith replied there are two kinds: one that deals with the public and acts like a bank, and private trust companies.

Senator Soles commented that there was not enough time to consider SB 338, Remove Sunset/Municipal Electric Service, and that it would be brought up at a later meeting.

The meeting adjourned at 11:55 a.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, March 18, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.JR. **327** Confirming Joseph A. Smith Jr./Comm'r of Banks
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE JOINT RESOLUTION 327

Sponsors:	Senator Soles.
Referred to:	Commerce.

March 10, 2003

A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENT OF JOSEPH A. SMITH, JR. AS COMMISSIONER OF BANKS.

Whereas, under provisions of G.S. 53-92, appointment by the Governor of the Commissioner of Banks is subject to confirmation by the General Assembly by joint resolution; and

Whereas, the term of the present Commissioner of Banks will end on March 31, 2003; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of his appointee to fill the term of Commissioner of Banks which will begin April 1, 2003, and expire March 31, 2007; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The appointment of Joseph A. Smith, Jr. as Commissioner of Banks for a term expiring March 31, 2007, is confirmed.

SECTION 2. This resolution is effective upon ratification.

SENATE BILL 327: Confirmation of Joseph A. Smith, Jr., Commissioner of Banks.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Sen. R.C. Soles
Date:	March 18, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Joint Resolution 327 confirms the appointment of Mr. Joseph A. Smith, Jr. as Commissioner of Banks for a four-year term that expires March 31, 2007. The resolution is effective upon ratification.***

CURRENT LAW: Mr. Smith was appointed by the Governor to serve as Commissioner of Banks for the unexpired term of Hal Lingerfelt that expires on March 31, 2003. That appointment was confirmed by the General Assembly in 2002. This appointment for a four-year term is subject to confirmation by the General Assembly. The Commissioner of Banks is paid $104,523 per year.

The Commissioner of Banks regulates and supervises banking activities under Chapter 53 and savings institutions activities under Chapter 54B of the North Carolina General Statutes. The primary responsibilities of this office are to insure safe and conservative management of the banks, savings and loan associations, and savings banks under its supervision taking into consideration the interest of the financial institutions' depositors, creditors, shareholders, and the public in their relations with such financial institutions. The North Carolina Banking Commission adopts rules to provide direction and supervision of the Commissioner of Banks as he enforces the rules of the Commission and the financial institution laws of North Carolina. The Banking Commission may review the actions of the Commissioner of Banks.

The Office of the Commissioner of Banks, together with the North Carolina Banking Commission, is responsible for the regulation of every state chartered bank, savings and loan association, savings bank or corporation transacting the business of banking in North Carolina, as well as registration/licensing of various financial institutions operating in North Carolina. These financial institutions include:

1. Check-cashers,
2. Consumer finance companies,
3. Mortgage bankers and mortgage brokers,
4. Money transmitters,
5. Refund anticipation lenders,
6. Bank holding companies, and
7. Reverse mortgage lenders.

Attached to this summary is a copy of the Governor's appointment letter, Mr. Smith's resume, and a letter from the State Ethics Board concerning Mr. Smith's Statement of Economic Interest.

S327-SMRU-001

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

MICHAEL F. EASLEY
GOVERNOR

March 4, 2003

The Honorable Marc Basnight
The Honorable James Black
The Honorable Richard Morgan
NC General Assembly
Raleigh, NC 27601

Dear President Pro-Tem Basnight, Speaker Black and Speaker Morgan:

Please be advised that Mr. Joseph A. Smith, Jr., will be reappointed as North Carolina Commissioner of Banks, effective April 1, 2003. As you know, Mr. Smith has served as Commissioner of Banks since June 1, 2002 when he was appointed to fill the unexpired term of Mr. Hal Lingerfelt.

As provided for in G.S. §53-92, Mr. Smith's reappointment is subject to reconfirmation by the General Assembly by joint resolution.

Enclosed are copies of Mr. Smith's resume and the most recent statement of economic interest. Please feel free to contact Sondra Davis, my Director of Boards and Commissions should you require additional information. She can be reached at (919) 715-0966.

With kindest regards, I remain

Very truly yours,

Michael F. Easley

MFE:bc

cc: The Honorable R.C. Soles, Jr.
The Honorable Walter Church, Sr.
The Honorable Edgar V. Starnes
Ms. Janet Pruitt
Ms. Denise Weeks

Joseph A. Smith, Jr.
2210 Coley Forest Place
Raleigh, NC 27607

Employment History

June 2002 - Present
Commissioner of Banks, State of North Carolina

May 2000 - May 2002
Counsel
Thacher Proffitt & Wood
Washington, DC

Financial services regulatory practice in the Washington office of a New York based law firm. Practice involved advising banks, thrift institutions and other financial services firms with regard to mergers and acquisitions, complex financing transactions and asset securitizations.

September 1991 - April 2000
Special Counsel (9/91 - 4/92)
General Counsel and Secretary
Centura Banks, Inc. And Centura Bank
[Now RBC Centura]
Rocky Mount, North Carolina

Chief legal officer of Centura during the period of time when it grew from $2.5 billion to over $10 billion in assets and extended its service offerings to securities and insurance.

September 1988 - April 1991
Counsel; Partner
Poyner & Spruill
Raleigh, North Carolina

Practice involving representation of bank and thrift clients in loan transactions, workouts and collection matters, general representation of other corporate clients and legislative representation of various corporate clients.

September 1984 - September 1988
Assistant General Counsel
Emery Air Freight Corporation
Wilton, Connecticut

General corporate practice including major financial transactions, aircraft leasing and litigation and claims management.

February 1979 - September 1984
Corporate Counsel
PepsiCo, Inc.
Purchase, NY

Corporate and securities practice for Fortune 50 company.

September 1975 - February 1979
Associate
Brown, Wood, Ivey, Mitchell & Petty
[Now Sidley Austin Brown & Wood]
New York, New York

Securities and public finance practice involving representation of the underwriters of various issues of corporate and municipal debt securities. Bond Counsel for a number of North Carolina issuers.

Education

Davidson College
A.B. (History) 1971

University of Virginia Law School
J.D. 1974

Advanced Management Program, Kenan-Flagler Business School, UNC

Professional Affiliations

Licensed to practice law in New York (1975) and North Carolina (1989)

Member of the Steering Committee, UNC Law School Center for Banking and Finance

Joseph A. Smith, Jr.

Joseph A. Smith, Jr. is the North Carolina Commissioner of Banks, having been appointed June 1, 2002, by North Carolina Governor Mike Easley to fill the unexpired term of the retiring Commissioner. Prior to his appointment, Mr. Smith was counsel in the Washington office of the New York law firm, Thacher, Proffitt & Wood, where he was a practitioner in its corporate and financial institutions practice group.

Before moving to Washington, DC, Mr. Smith served as General Counsel and Secretary of Centura Banks, Inc. and Centura Bank (now RBC Centura) in Rocky Mount, North Carolina, and engaged in the private practice of law in Raleigh.

Mr. Smith is a graduate of Davidson College and the University of Virginia Law School. He lives in Raleigh, North Carolina, is married and has two grown sons.

Publications

"The Federal Banking Agencies' Guidance on Subprime Lending: Regulation with a Divided Mind." North Carolina Banking Institute (Volume 6 April 2002)

"*Savings for the Poor: The Hidden Benefits of Electronic Banking*: A Review and Response." North Carolina Banking Institute (Volume 5 April 2001)

"Retail Delivery of Financial Services After the Gramm-Leach-Bliley Act: How Will Public Policy Shape the Financial Services Supermarket?" North Carolina Banking Institute (Volume 4 April 2000)

[With David E. Brown, Jr. and Kathryn M. Cole] "Strategic Alliances: Why, How and What to Look Out For." North Carolina Banking Institute (Volume 3 April 1999)

"The Role of Outside Counsel in the Creation of Economic Value." North Carolina Banking Institute (Volume 2 April 1998)

Other Information

Born November 9, 1949 in Charleston, WV. Attended public schools in hometown of Dunbar, WV before admission to Davidson.

Married to the former Elizabeth Marion (23 years). Two sons: Joseph III, who graduated from Johns Hopkins University in May 2002; and Matthew, a student at Cape Fear Community College in Wilmington.

Member of the Board of Trust of Saint Augustine's College, Raleigh, NC, from 1995 through 2001.

NO-CHANGE FORM ("Short Form")

to

Statement of Economic Interest

Executive Order Number One

Office Use Only
Code 807
Appt by _____
Date filed: 1/9/03

NORTH CAROLINA BOARD OF ETHICS

For assistance call 919-733-2780 Fax 919-733-2785

e-mail nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Mail to: Board of Ethics, 1324 Mail Service Center, Raleigh, NC 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

Executive Order Number One requires that Public Officials update their Statement of Economic Interest *each year* by **May 15**. See Sections 9 (b) & (e). New information must be reported and information no longer applicable must be deleted.

IF YOU DO **NOT** HAVE ANY CHANGES TO REPORT, please sign, date, and have this "No-Change" form notarized by a notary public. Upon completion, please return this signed, dated, and notarized page ONLY to the above address. If you do not have any material changes to report, this is the only form you need to submit.

IF YOU **DO** HAVE CHANGES TO REPORT, please make all necessary changes on a supplemental Statement of Economic Interest form. Other than your name and the name of your Board or Agency, YOU NEED ONLY ANSWER QUESTIONS WHERE YOU HAVE CHANGES TO REPORT.

Please sign, date, and have whichever form you use notarized before returning it to the Board of Ethics at the above address. AGAIN, ALL FORMS MUST BE NOTARIZED.

Name of Person Filing: Joseph A. Smith, Jr.

Name of Board on which you are serving: _____

or

Name of State Agency in which you are employed: Office of Commissioner of Banks

VERIFICATION OF *NO MATERIAL CHANGES*

I hereby certify that I have read Executive Order Number One and this form, and to the best of my information, knowledge and belief, there have been **no material changes** to my personal, familial, or financial situation which would require disclosure pursuant to Executive Order Number One (January 12, 2001), and I have no additional material information to disclose that was not disclosed in my previously filed Statement of Economic Interest. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

1/8/2003
Date

Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Subscribed and sworn before me this the 8th day of January, 2003.

My Commission Expires: 10/12/2005

Notary Public

807
emplee (Con)

RECEIVED
BOARD OF ETHICS
Date: 5-29-02 (Con)
6-3-02 (Orig)

Statement of Economic Interest

for Executive Order Number One

NORTH CAROLINA BOARD OF ETHICS
For assistance call 919-733-2780 Fax 919-733-2785
e-mail nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Mail form to: Board of Ethics, 1324 Mail Service Center, Raleigh, N.C. 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

Name of Person Filing: Joseph A. Smith, Jr.
Name of Spouse: Elizabeth A. M. Smith
Home Address: 3223 Adams Court, Fairfax, VA 22030
Home Telephone: (703) 279-1193

Name of Employer: Thacher Proffitt & Wood
Your Title: 1700 Pennsylvania Ave., N.W., Suite 800
Business Address: Washington, DC 20006
Business Telephone: 202-347-8400
Business Fax: 202-626-1930
Business Activity: Title: counsel
Law Firm

Spouse's Employer and Business Activity: Flint Hill School, Oakton, VA
School

If you are filing because you are serving on or being considered for appointment to a State Board, Commission, or Council state the **name of the Board, Commission, or Council.**

Not applicable

Are you, your employer, your spouse, or spouse's employer licensed or regulated by the Board on which you are/will be serving, or have business relationships with the Board? No X If yes, please explain:

NOTE: Executive Order Number One requires you to list assets and liabilities with a value of $10,000 or more for yourself and spouse as set forth below. You are NOT required to include an estimated value of the assets and liabilities.

1. List all parcels of **real estate** located in North Carolina in which you, or your spouse, have an ownership interest valued $10,000 or more. Give street address or other description adequate to determine the location of each parcel. State the specific interest held in each identified parcel.

Contract to purchase land and building for personal residence in Raleigh, NC. Address: 2210 Coley Forest Place, Raleigh, NC 27607-3162. Deed reference: Book 3125, Page No. 0370, Wake County.

Identify real estate that is currently leased or rented to a State Government Agency, and identify the Agency. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest.

None

If any parcels are located in an area over which the Board you are serving on has regulatory authority or could otherwise be affected by Board decisions, please explain.

Not applicable.

2. Identify **personal property** sold to or bought from the State within the preceding two years and personal property currently leased or rented to the State by you or your spouse. Indicate whether the transactions are in accordance with the provisions of the Division of Purchase and Contract. If not, please explain.

None

3. List the name of each **publicly-owned company** in which the value of securities held by you or your spouse is $10,000 or more. You may attach a list from your broker.

None

4. List the name and business activity of each **non-publicly-owned company or business entity** in which the value of securities or other equity interests held by you or your spouse is $10,000 or more, including but not limited to, interests held in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations.

None

With respect to the entities listed above, should any of the entities own securities or equity interests of $10,000 or more in other companies or business entities, list the name of the company or business entity and a brief description of the business activity of each.

Not applicable

Are you, your spouse, or any of the entities listed above licensed by, regulated by, or have business relationships with the same area of State Government with which you are associated? If so, please explain.

Not applicable

5. You are required to make a good faith effort to list any individual or business entity with which you or your spouse have a financial or professional relationship provided:

(1) The nature of the relationship presents a conflict of interest or the appearance of a conflict of interest for you while performing your official duties, or

(2) Any separate financial or professional interest of such individual or business entity would present a conflict of interest or appearance of a conflict of interest for you while performing your official duties. For each individual or business entity listed, generally describe the financial or professional relationship and provide a brief explanation of why the individual or business entity has been listed.

None. Contractual relationship with Thacher Proffitt & Wood terminates May 31, 2002.

6. List all directorships on all boards on which you are serving. Please explain any situation that could appear to be

from any of the following categories of legal representation:

( ) Admiralty ( ) Taxation ( ) Decedent's estates (X) Corporation law ( ) Real property

( ) Negligence (representing plaintiffs) ( ) Negligence (representing defendants)

( ) Criminal law ( ) Labor law ( ) Insurance law (X) Administrative law (Banking)

( ) Utilities regulation or representation of regulated utilities ( ) Representation of local governments

13. If the information has not been included in previous questions, list all **non-publicly owned businesses** you have been associated with during the past five years as an employee, officer, director, partner, or owner. For each business listed, state your association, and the time period of your association. To the best of your knowledge, state whether any of the businesses listed does business with the same area of State Government with which you are associated. State the nature of business, and whether you or the business is licensed by, regulated by, receive permits, grants or other funding from the same area of State Government with which you are associated.

None

14. List all **gifts** received with a value exceeding $200 during the twelve months preceding the date of this statement from sources other than your spouse or relatives.

None

List all **gifts** received with a value exceeding $100 during the twelve months preceding the date of this statement from any source having business with or regulated by the State.

None

15. List all **bankruptcies** filed during the preceding five years by you, your spouse, or any entity in which you or your spouse has been associated financially. Provide a brief summary of the facts and circumstances regarding each listed bankruptcy.

None

16. Having read Executive Order Number One, state any problems or conflicts of interest you may have that are not fully covered in previous questions. Include an explanation of how you would propose to resolve the matter.

None

a conflict of interest with your official duties.

None

Membership on Executive Committee and Steering Committee of the UNC Law School Center for Banking and Finance, and the Banking Institute have been terminated.

7. Are you an **elected official** at the local government level? If so, please explain.

No

8. If you, your spouse, or your dependent children are the **beneficiary of a trust** created, established or controlled by you, list the name and address of the trustee and a description of the trust. To the extent such information is available to you, include a list of businesses in which the trust has an ownership interest of $10,000 or more.

Not applicable

9. List each **asset** with a valuation of $10,000 or more, held by you or your spouse, which have not been listed elsewhere. Some examples are mutual funds, certificates of deposit, bank accounts and retirement accounts. It is not necessary to list furniture, jewelry, automobiles, and other personal effects.

Bank accounts with Citibank, FSB, Suntrust and Wachovia Bank, NA
Retirement accounts with Vanguard Group, TIAA-CREF and BB&T Retirement Services

10. List each **liability** with a valuation of $10,000 or more for you and your spouse. Give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, and automobile loans.

Home mortgage on VA residence, SBA as mortgagee. Application for mortgage on Raleigh residence through Wachovia Bank, NA

11. List each **source of income** for you and your spouse where $10,000 or more was received. For each source listed, describe the type of income received, and state the name of the business entity or individual from which the income was received. Some examples of income are salary or wages, professional fees, honoraria, interest, stock dividends, capital gains, and business profits.

Sources for Person Filing:

Thacher Proffitt & Wood contractual compensation

Sources for Spouse: Flint Hill School salary.

Please explain if any of the sources of income are regulated by, receive permits from, or otherwise are connected with the same area of State Government with which you are connected.

Not applicable

12. If you are a **practicing attorney**, check each category of legal representation in which you and/or the law firm with which you are associated has, during any single year of the past five years, earned legal fees of $10,000 or more

VERIFICATION

I hereby do certify that I have read this Statement of Economic Interest, and all attachments and to the best of my knowledge and belief it is true, correct and complete. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein. I acknowledge that I am under a continuing obligation to avoid conflicts of interest and the appearance of conflicts of interest. If I believe a potential for conflict exists, I will inquire of the Board of Ethics as to that potential conflict.

May 29 2002
Date

Signature of Person Filing

~~STATE OF NORTH CAROLINA~~ Commonwealth of Virginia
COUNTY OF Arlington

Subscribed and sworn to before me this the 29th day of May, 2002.

My Commission Expires: March 31, 2005

Dana K. Blumenthal
Signature of Notary Public

State of North Carolina

OFFICE OF THE COMMISSIONER OF BANKS

MICHAEL F. EASLEY
GOVERNOR

March 14, 2003

JOSEPH A. SMITH, JR.
COMMISSIONER OF BANKS

Senator Robert C. Soles, Jr.
Legislative Building, Room 2022
Raleigh, NC 27601-2808

Dear Senator Soles:

Thank you very much for the opportunity of appearing before the Senate Commerce Committee on March 18, 2003, to discuss the activities of the Office of the North Carolina Commissioner of Banks (hereinafter, sometimes, "OCOB"). In that regard, I enclose a summary sheet regarding such activities for your use and the use of the members of the Committee. In addition, I would like to address pertinent issues relating to our two major activities: supervision and regulation of banking organizations and regulation of the residential mortgage lending industry.

Supervision and Regulation of Banking Organizations.

As directed by the General Assembly (Session Laws 2001-193), the Office of Commissioner of Banks and North Carolina Savings Institutions Division have been consolidated and the North Carolina Banking Commission expanded to include members who were previously members of the Savings Institutions Commission. In implementing this restructuring, my colleagues and I have determined that the appropriate distinctions between banking institutions today relate less to the charter under which such institutions are organized (e.g., commercial bank, savings bank, savings and loan association) than to the scope of operations and risk profiles of such institutions. To be more specific:

- Banking organizations that we classify as "large complex institutions" comprise roughly twenty percent of the firms we supervise, but account for over eighty percent of the total assets of state banking organizations. As a rule, these institutions operate in more than one jurisdiction and have relatively broad product lines. The risk profiles of such institutions relate to issues of corporate control and the ability to maintain administrative infrastructures that can manage their growth and complexity.

- Banking organizations that we classify as "community institutions" comprise roughly eighty percent of supervised firms, but account for less than twenty

LOCATION: 316 W. EDENTON STREET, RALEIGH, NC 27603
MAILING ADDRESS: 4309 MAIL SERVICE CENTER, RALEIGH, NC 27699-4309
(919) 733-3016 • FAX (919) 733-6918 • INTERNET: WWW.BANKING.STATE.NC.US
AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

- percent of total assets. These institutions are, in many ways, the heart and soul of Tar Heel banking and provide numerous public benefits to our citizens. The risk profiles of such institutions generally relate to the limited size of the markets they serve and, in some instances, to relatively short operating histories.

To appropriately supervise these different kinds of banking organizations, we have divided our examiners into a complex institutions group with one team of examiners and a community institutions group with three teams of examiners. State-chartered trust companies are supervised by the complex institutions group. Our restructuring efforts are works in progress, but we believe they will make OCOB more efficient and effective.

Mortgage Lending Act.

The General Assembly adopted the Mortgage Lending Act (Session Laws 2001-393, hereinafter, the "MLA") in 2001 with an effective date of July 1, 2002, and amended the MLA in 2002 (Session Laws 2002-169). As originally enacted, the MLA required that mortgage bankers, brokers and loan officers not affiliated with certain exempt entities (generally, regulated financial institutions) be licensed by OCOB and gave OCOB enhanced enforcement powers to police the retail mortgage market. The 2002 amendment to MLA, among other things, allowed for issuance of limited licenses to representatives of certain finance and insurance firms.

Since the effective date of the MLA, OCOB has received over 12,000 applications for licensure and has processed over 10,000 of such applications. Most, if not all, of the applications yet to be processed relate to limited or exclusive brokerage arrangements authorized by the 2002 amendments to the MLA.

Approximately 500 applications have been denied to date for a variety of reasons, generally prior criminal record or lack of financial responsibility (e.g., liens for unpaid taxes, unsatisfied judgments). Of the 500 denied applicants: (i) 133 have failed to perfect their rights of appeal from the denial; (ii) 114 have been resolved through hearings or consent agreements; (iii) 59 have perfected appeals that are in process; and (iv) 194 remain in process. Appeals hearings by the Commissioner of Banks have been scheduled for the next several months and will continue until all appeals have been heard.

Because of the volume of work generated by the licensing process and the likely volume of work that will result from examination and investigative activities in the future, the Mortgage Division has been established as a separate division of OCOB. George King, formerly OCOB's Ombudsman, will serve as the director of this new division.

Conclusion

The matters discussed above are the most significant of a large number of changes that OCOB has made during the last six months to deal effectively with the challenges that confront us. I believe we have a solid foundation of personnel, assets and know-how to fulfill the mandates given to us by the General Assembly. My colleagues and I look forward to working with the General Assembly in the future for the betterment of North Carolina and its citizens.

Very truly yours,

Joseph A. Smith, Jr.
Commissioner of Banks

Enclosure

Commissioner of Banks
Fact Sheet

Banks, Savings Banks, and Savings & Loan Associations

The North Carolina Commissioner of Banks regulates banks, savings banks, and savings & loan associations under N.C.G.S. 53 *et seq.*, 54B *et seq.*, and [illegible] *seq.* The primary purpose of these statutes is to ensure the safe conduct of banking business within the state, to maintain the public's confidence in the financial institutions, and to protect the institutions' depositors, debtors, creditors, and shareholders.

As of 12/31/02 we regulated:

65	Commercial Banks 1,911	branches
20	Savings Banks 61	branches
1	Savings and Loan Association	
4	State Trust Companies	
2	Trust Representative Offices registered	
30	Loan Production Offices registered	

As of 12/31/02 86 state-chartered financial institutions reported:

Total Deposits	$77,165,093,000
Total Assets	$117,577,944,000

Bank Holding Companies and Savings Bank Holding Companies

The Bank Holding Company Act of 1984 (N.C.G.S. 53-225 *et seq.*) requires certain bank holding companies to register with the Commissioner of Banks. Companies that control NC federally or State-chartered banks, or companies that control any non-bank subsidiary having offices located in the State are subject to the registration requirements.

As of 12/31/02 we had:

59	Bank Holding Companies registered
44	Bank Holding Companies registered/regulated
6	Savings Bank Holding Companies registered/regulated

Consumer Finance

The North Carolina Consumer Finance Act (N.C.G.S. 53-164 *et seq.*) authorizes the Commissioner of Banks to license and supervise small loan companies that make direct consumer loans of $10,000 or less and charge rates in excess of those permitted by Chapter 24. These lenders may choose to make loans as a General Lender (N.C.G.S. 53-173) or as an Optional Rate Lender (N.C.G.S. 53-176).

As of 12/31/02 we had licensed:

42	General Lenders (lend $3,000 or less)
541	Optional Rate Lenders (lend $10,000 or less)
583	**Total Offices**

Refund Anticipation Loans

The Refund Anticipation Loan Act requires facilitators who make tax refund loans to register with the Commissioner of Banks.

As of 12/31/02 we had registered:

583 Refund Anticipation Lenders 1,227 Offices

Mortgage Lenders, Brokers, and Loan Officers

The North Carolina Commissioner of Banks licenses all mortgage lenders, brokers and loan officers under N.C.G.S. 53-243.01 *et seq.*, unless exempt by statute. This statute became effective 7/01/2002, replacing the mortgage registration laws under Article 19 of Chapter 53. Registrants under the old law will receive "grandfathered" licenses during the first year.

As of 12/31/02 we had:

293	Mortgage Lenders with 505 branches
432	Mortgage Brokers with 232 branches
7,694	Loan Officers

As of 12/31/02 licensing applications were still being processed.

Money Transmitters

The Money Transmitters Act (N.C.G.S. 53-192 *et seq.*) provides that no one can sell or issue checks, drafts, money orders, or other instruments for the payment or transmission of money unless licensed by the Commissioner of Banks

As of 12/31/02 we had:

47 Money Transmitter Licensees

Reverse Mortgages

The Reverse Mortgage Act (N.C.G.S. 53-255 *et seq.*) authorizes the Commissioner of Banks to approve reverse mortgage lenders. Even though banks, savings institutions, and credit unions are exempt and do not have to obtain the Commissioner's approval, nevertheless they must notify him of their intent to offer reverse mortgages. Reverse mortgages are available to homeowners over 62. They provide monthly loan advances which are repaid upon death or the sale of the house.

As of 12/31/02 we had approved:

4	Reverse Mortgage Lenders
1	Exempt Lender

Trust Licenses

Pursuant to N.C.G.S. 53-159.1, *et seq.*, banks wishing to act in a fiduciary capacity must make application to the Commissioner of Banks for a license, and renew the license annually thereafter. Licenses are granted or renewed upon a determination of applicant's solvency and receipt of a fee.

As of 12/31/02 we had:

29 Trust Licensees

[illegible]k-Cashing Businesses

[illegible]r N.C.G.S. 53-275 *et seq.*, persons or other entities providing check-cashing services for a fee, service charge, or other consideration must be licensed by the Commissioner of Banks. The law sets maximum fees for the check-cashing service.

As of 12/31/02 we had:

156 Licensees 1,212 Locations

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 1

SENATE BILL 338*

Short Title:	Remove Sunset/Municipal Electric Service.	(Public)
Sponsors:	Senators Queen, Tillman; Albertson, Allran, Apodaca, Ballantine, Berger, Bingham, Blake, Brock, Carpenter, Clodfelter, Dorsett, Forrester, Foxx, Garrou, Garwood, Gulley, Hagan, Hargett, Hartsell, Holloman, Hoyle, Jenkins, Kinnaird, Lucas, Moore, Purcell, Rand, Reeves, Shaw, Shubert, Sloan, Smith, Stevens, Swindell, Thomas, Webster, and Weinstein.	
Referred to:	Commerce.	

March 10, 2003

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET ON THE LAW PROVIDING THAT CERTAIN SECONDARY SUPPLIERS OF ELECTRIC SERVICE MAY FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH WRITTEN CONSENT FROM THE CITY, ALLOWING THE MEMBERS OF AN ELECTRIC MEMBERSHIP CORPORATION TO VOTE BY PROXY ON DECISIONS TO ENCUMBER CORPORATE PROPERTY OR TO DISSOLVE THE CORPORATION, AND MAKING TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL ELECTRIC SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 6 of Chapter 346 of the 1997 Session Laws, as amended by S.L. 1999-111, reads as rewritten:

"**Section 6.** This act is effective when it becomes law and applies only to annexations or incorporations that occur on or after the effective date. ~~This act expires on December 31, 2003.~~"

SECTION 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 18, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
KATIE DEREN	GOODYEAR STATESVILLE PLANT
Mike Carey	NC Chamber
Brennie Harrington	NWC Pembroke
[illegible]	Cates Davis
[illegible]	Bone and Assoc - Rep Lanier
[illegible]	NCAEC
[illegible]	Moore Van Allen
Al Ripley	NC Justice Ctr
Katherine Davis	Electricities of NC
Katherine Joyce	Electric Cooperatives
Lou Ann Harris	L.A Harris & Assoc Inc

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 18, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Hayes	Hayes Law Firm
Bill McAulay	PSNC Energy
Taylor Frances	Sen. Purcell
[illegible]	Progress Energy
[illegible]	Bank of America
John Bowdish	Self
Ken Melton	Alley Associates
John Goodman	Mercer Assoc
Mark Burtschi	The Goodyear Tire & Rubber Company
David Barnes	Poyner Spruill LLP
Trinna Ware	Goodyear - Spring Hope Plant

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 18, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Marie Mercadante	Poyner Spruill
Bill Hale	Jordan Price Law Firm
Dan Green	Four County EMC
Jimmy Smith	Four County EMC
Lisa Perry	Duke Energy
Jim Koneker	Kelly-Springfield Tire Co
Richard Edams	" " "
Jo B. Andrews	Goodyear-Asheboro
Grant McKinnon	Kelly Springfield Tire Co.
Adam Sadlowski	Goodyear - Asheboro
May Nicholson	Goodyear — Spring Hope

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 18, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Hanson	316 W. Edenton St., Raleigh N.C. Office of Commissioner of Banks
Reitzel Denton	NC office of Commissioner of Banks
Nancy Rhue	NC Office of Commissioner of Banks
George King	Office of the Commissioner of Banks
Irene Smith	" " "
Paul Stahl	NC Bankers Assn.
Ken Howell	Governor's office

AGENDA

SENATE COMMERCE COMMITTEE
Tuesday, March 25, 2003 at 11:00 a.m.
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Presentations

- Ms. Jo Anne Sanford, Chair, NC Utilities Commission
- Mr. Robert Gruber, Executive Director, Public Staff, NC Utilities Commission

III. Bill

- SB338 Remove Sunset/Municipal Electric Service Sen. Queen

IV. Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, March 25, 2003 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, March 25, 2003, in Room 1027 of the Legislative Building. Sixteen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles opened the meeting by announcing the committee would consider Senate Bill 338, Remove Sunset/Municipal Electric Service, sponsored by Senator Joe Sam Queen. Senator Queen was introduced to explain the bill. Senator Rucho moved for a favorable report. The motion carried.

Senator Soles introduced Ms. Jo Anne Sanford, Chair, North Carolina Utilities Commission, to make a presentation about North Carolina's public utility infrastructure and regulatory climate (see attached).

Senator Soles then introduced Mr. Robert Gruber, Executive Director of the Public Staff of the North Carolina Utilities Commission. Mr. Gruber explained that the 85-employee, nine division agency is involved in all utility industries. One of their large responsibilities is to deal with consumer complaints. They receive about 60-70 per day. The public staff assists the Commission by negotiating settlements before the cases go to the Commission, and the General Assembly by addressing utilities concerns.

Senator Soles introduced the members of the Utilities Commission and asked each to say a few words:

- Mr. J. Richard Conder
- Mr. Robert V. Owens, Jr.
- Mr. Sam J. Ervin, IV
- Ms. Lorinzo L. Joyner
- Mr. James Y. Kerr, II
- Mr. Michael S. Wilkins

The meeting adjourned at 11:55 a.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, March 25, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **338** Remove Sunset/Municipal Electric Service.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

SB 338:
Remove Sunset/Municipal Electric Service

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Sen. Queen
Date:	March 25, 2003	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

SUMMARY: SB 338 permanently removes a sunset date of December 31, 2003 that applies to S.L. 1997-336, as amended by S.L. 1999-111.

CURRENT LAW: The provisions contained in S.L. 1997-336 will expire on December 31, 2003. A copy of S.L. 1997-336 is attached.

BILL ANALYSIS: S.L. 1997-346 allows secondary suppliers of electricity (suppliers other than the city or the entity holding a franchise from the city) to supply electricity in newly annexed municipal territory with the agreement of the city. The act also made changes to Chapter 117 of the General Statutes, which applies to electric and telephone membership corporations. It allows voting by proxy where the issue involves sale or encumbrance of co-op property, or the dissolution of an electric cooperative. Prior to the passage of S.L. 1997-346, only votes cast in person could be counted.

BACKGROUND: S.L. 1997-346 originally was to sunset at sine die adjournment of the 1999 General Assembly. S.L. 1999-111 extended the expiration date to December 31, 2003. This bill makes the provisions permanent.

The act is effective when it becomes law.

take place at an election held on a date set by the Jackson County Board of Elections, but no later than July 1, 1998. Initial terms shall expire at the time provided by general law as if the election had taken place at the general election on the Tuesday after the first Monday in November 1997.

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 1997.

Became law on the date it was ratified.

S.B. 848

CHAPTER 346

AN ACT TO PROVIDE THAT CERTAIN SECONDARY SUPPLIERS OF ELECTRIC SERVICE MAY FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH WRITTEN CONSENT FROM THE CITY, TO ALLOW THE BOARD OF AN ELECTRIC MEMBERSHIP CORPORATION TO VOTE BY PROXY ON DECISIONS TO ENCUMBER CORPORATE PROPERTY OR TO DISSOLVE THE CORPORATION, AND TO MAKE TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL ELECTRIC SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-331 reads as rewritten:

"*§ 160A-331. Definitions.*

Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

(1) 'Assigned area' means any portion of an area annexed to or incorporated into a city which, on or before the effective date of annexation or incorporation, had been assigned by the North Carolina Utilities Commission to a specific electric supplier pursuant to G.S. 62-110.2.

(1a) 'Assigned supplier' means a person, firm, or corporation to which the North Carolina Utilities Commission had assigned a specific area for service as an electric supplier pursuant to G.S. 62-110.2, which area, in whole or in part, is subsequently annexed to or incorporated into a city.

~~(1)~~ (1b) The 'determination date' is

a. April 20, 1965, with respect to areas within the corporate limits of any city as of April 20, 1965;

b. The effective date of annexation with respect to areas annexed to any city after April 20, 1965;

c. The date a primary supplier comes into being with respect to any city first incorporated after April 20, 1965.

(2) 'Line' means any conductor located inside the city for distributing or transmitting electricity, other than

a. For overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such premises, and

b. For underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.

(3) 'Premises' means the building, structure, or facility to which electricity is being or is to be furnished. Two or more buildings, structures, or facilities that are located on one tract or contiguous tracts of land and are used by one electric consumer for commercial, industrial, institutional, or governmental purposes, shall together constitute one 'premises,' except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one 'premises' if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.

(4) 'Primary supplier' means a city that owns and maintains its own electric system, or a person, firm, or corporation that furnishes electric service within a city pursuant to a franchise granted by, or contract with, a city, or that, having furnished service pursuant to a franchise or contract, is continuing to furnish service within a city after the expiration of the franchise or contract.

(5) 'Secondary supplier' means a person, firm, or corporation that furnishes electricity at retail to one or more consumers other than itself within the limits of a city but is not a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation."

Section 2. G.S. 160A-332(a) reads as rewritten:

"(a) The suppliers of electric service inside the corporate limits of any city in which a secondary supplier was furnishing electric service on the determination date (as defined in G.S. 160A-331(1)) shall have rights and be subject to restrictions as follows:

(1) The secondary supplier shall have the right to serve all premises being served by it, or to which any of its facilities are attached, on the determination date.

(2) The secondary supplier shall have the right, subject to subdivision (3) of this section, to serve all premises initially requiring electric service after the determination date which are located wholly within 300 feet of its lines and located wholly more than 300 feet from the lines of the primary supplier, as such suppliers' lines existed on the determination date.

(3) Any premises initially requiring electric service after the determination date which are located wholly within 300 feet of a secondary supplier's lines and wholly within 300 feet of another secondary supplier's lines, but wholly more than 300 feet from the primary supplier's lines, as the lines of all suppliers existed on the determination date, may be served by the secondary supplier which the consumer chooses, and no other supplier shall thereafter furnish electric service to such premises, except with the written consent of the supplier then serving the premises.

(4) A primary supplier shall not furnish electric service to any premises which a secondary supplier has the right to serve as set forth in subdivisions (1), (2), ~~and (3)~~ (3), and (6a) of this section, except with the written consent of the secondary supplier.

(5) Any premises initially requiring electric service after the determination date which are located wholly or partially within 300 feet of the primary supplier's lines and are located wholly or partially within 300 feet of the secondary supplier's lines, as such suppliers' lines existed on the determination date, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.

(6) Any premises initially requiring electric service after the determination date, which are located only partially within 300 feet of the secondary supplier's lines and are located wholly more than 300 feet from the primary supplier's lines, as such supplier's lines existed on the determination date, may be served either by the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.

(6a) Notwithstanding any other provision of law, a secondary supplier, upon obtaining the prior written consent of the city, shall be the exclusive provider of electric service within (i) any assigned area for which that secondary supplier had been assigned supplier prior to the determination date; or (ii) any area previously unassigned by the North Carolina Utilities Commission pursuant to G.S. 62-110.2. However, any rights of other electric suppliers existing under G.S. 62-110.2 prior to the determination date to provide service shall continue to exist without impairment in the areas described in (i) and (ii) above.

(7) Except as provided in subdivisions (1), (2), (3), (5), ~~and (6)~~ (6), and (6a) of this section, a secondary supplier shall not furnish

electric service within the corporate limits of any city unless it first obtains the written consent of the city and the primary supplier."

Section 3. G.S. 117-10.2 reads as rewritten:

"§ *117-10.2. Restriction on municipal service.*

~~No~~ Except as otherwise provided in this section, no electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of G.S. 117-10.1, or as permitted under ~~G.S. 160-511, 160-512, and 160-513; provided, that an~~ G.S. 160A-331, 160A-332, and 160A-333. An electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing."

Section 4. G.S. 117-20 reads as rewritten:

"§ *117-20. Encumbrance, sale, etc., of property.*

No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property which lie within the limits of an incorporated city or town, or which shall represent not in excess of ten percent (10%) of the total value of the corporation's assets, or which in the judgment of the board are not necessary or useful in operating the corporation) unless

(1) Authorized so to do by the votes cast in person or by proxy by at least two-thirds of its total membership, ~~without proxies,~~ and

(2) The consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained.

Notwithstanding the foregoing provisions of this section, the members of such a corporation may, by the affirmative majority of the votes cast in person or by proxy at any meeting of the members, delegate to the board of directors the power and authority (i) to borrow moneys from any source and in such amounts as the board may from time to time determine, (ii) to mortgage or otherwise pledge or encumber any or all of the corporation's property or assets as security therefor, and (iii) with respect to Electric Membership Corporations only, to sell and lease back any of the corporation's property or assets."

Section 5. G.S. 117-24 reads as rewritten:

"§ *117-24. Dissolution.*

Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed 'Certificate of Dissolution of .....' (the blank space being filled in with the name of the corporation) and shall state:

(1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.

(2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as

herein provided, the dates on which the certificates of incorporation of the original corporations were filed.

(3) That the corporation elects to dissolve.

(4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by at least two-thirds of its total ~~membership, without proxies.~~ membership.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed among the members in such manner as is provided for in the corporation's charter or bylaws, and the charter or bylaws may provide for distributions to persons who were members in one or more prior years."

Section 6. This act is effective when it becomes law and applies only to annexations or incorporations that occur on or after the effective date. This act expires on the date of the adjournment sine die of the 1999 General Assembly.

In the General Assembly read three times and ratified this the 29th day of July, 1997.

Became law upon approval of the Governor at 4:05 a.m. on the 31st day of July, 1997.

S.B. 463

CHAPTER 347

AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1997, AND TO EXTEND EXPIRING PROVISIONS OF LAW.

The General Assembly of North Carolina enacts:

FUNDS SHALL NOT REVERT

Section 1. Section 5 of S.L. 1997-256 reads as rewritten:

"Section 5. If the provisions of Senate Bill 352, 3rd edition, Senate Bill 352, 5th edition, or both, direct that funds shall not revert, the funds shall not revert on June 30, 1997. Unless these funds are encumbered on or before June 30, 1997, these funds shall not be expended after June 30, 1997, except as provided by a statute that becomes effective after June 30, 1997. If no such statute is enacted prior to ~~August 1, 1997,~~ August 15, 1997, these funds shall revert to the appropriate fund on that date."

North Carolina's Public Utility Infrastructure & Regulatory Climate

Senate Commerce Committee

March 25, 2003

Who We Are

NORTH CAROLINA UTILITIES COMMISSION
Dobbs Building, 430 North Salisbury Street 27603-5918
4325 Mail Service Center 27699-4325
Phone: 919/733-4249 Fax 919/733-7300
www.ncuc.net

Commissioners

J. Richard Conder
Robert V. Owens, Jr.
Sam J. Ervin, IV
Lorinzo L. Joyner
James Y. Kerr, II
Michael S. Wilkins
Jo Anne Sanford, Chair

Regulation of Public Utilities

- Purpose: protect interests of public in adequate service at reasonable rates.
- Traditional regulatory bargain: utilities exchange benefit of monopoly franchised service territory for obligation to provide adequate service at reasonable rates.
- Commission's regulatory obligation: to be fair and reasonable to public utilities and their customers.
- Commission's regulatory tools:
  - certification of new facilities
  - rate establishment or review &
  - service quality oversight
- Recent trends: certain utility services have been fully or partially deregulated, substantially changing the Commission's responsibility for determining rates and service quality standards.

History of NC Utilities Commission

- Oldest regulatory body in state government: evolved from Railroad Commission (1891) to Corporation Commission (1899) to Utilities Commission (1933)
- History of significant legislative grants of, or limitation on, regulatory authority:
  - Railroad – 1891
  - Telephone – 1893
  - Electric, Gas & Water – 1913
  - Wastewater – 1917
  - Housing – 1935
  - Hospitals – 1943
  - Buses/Brokers – 1949
  - Motor Carriers & Ferries – 1963
  - Electric Generation – 1965
  - Electric Membership Cooperatives – 1965
  - Payphone Service Providers – 1985
  - Long Distance Telephone Competition – 1985
  - Shared Tenant Service – 1987
  - Local Telephone Competition – 1995
  - Water Resale – 1996

NCUC Organization

- Administrative agency of General Assembly; legislative oversight by House Public Utilities Committee, Senate Commerce Committee, and Joint Legislative Utility Review Committee
- Seven members: appointed by Governor, subject to confirmation by General Assembly, serving staggered, eight-year terms *(G.S. 62-10)*
- Chair: appointed by Governor, 4-year term, organizes Commission's work. *Ex officio* member of Tax Review Board, Energy Policy Council, Agency for Public Telecommunications Board and Geographic Information Services Board. Membership responsibilities currently shared among commissioners. *(G.S. 62-12, 13)*

NCUC Organization *cont.*

- Commissioners subject to standards of judicial conduct and prohibited by law from engaging in any other employment, business or profession while in office *(G.S. 62-10(i))*
- NCUC employs 63 people, organized among 3 divisions:
  - Administrative, Operations and Fiscal Management
- Annual budget: $5,766,269 (authorized, 2002)
  - NCUC budget: $5,367,484
  - Gas Pipeline Safety budget: $398,785
  - Gas Pipeline Safety is housed in Commission, partial federal reimbursement
  - NCUC is fee-funded agency, supported by regulatory fee percentage established by General Assembly annually and applied to utility jurisdictional revenues *(G.S. 62-302)*

NCUC's Responsibilities & Procedures

- Calendar year 2002:
  - 1,058 formal proceedings instituted before NCUC
  - 112 hearings in contested cases
  - 9,990 filings in Chief Clerk's office
  - 2,308 orders issued
  - Current docket = 535 items
- Appeals from general rate case decisions to NC Supreme Court; all others to NC Court of Appeals (absent federal jurisdiction)
- NCUC participates in proceedings before federal courts and regulatory agencies *(G.S. 62-48)*

NCUC's Responsibilities & Procedures *cont.*

- Publication requirements:
  - Annual reports to Governor include copies of general orders, regulations, comparative statistical data, rate comparisons, report of pending matters & digest of principal decisions
  - Final decisions on merits in formal proceedings
- Limited jurisdiction over municipalities and cooperatives

Certified Utilities

(AS OF 3/04/03)

UTILITY	QTY
BUS / BROKER	36
ELECTRIC	5
ELECTRIC COOPERATIVES	32
ELECTRIC MERCHANT PLANTS	10
FERRIES	14
GAS	7
MOTOR CARRIERS OF HOUSEHOLD GOODS	198
SMALL POWER	76
TELEPHONE:	
▪ COMPETITIVE LOCAL PROVIDERS	197
▪ INCUMBENT LOCAL EXCHANGE	16
▪ LONG DISTANCE CARRIERS	430
▪ PAYPHONE PROVIDERS	304
▪ SHARED TENANT SERVICES	23
WATER RESALE	150
WATER / WASTEWATER	219
TOTAL	**1717**

Industry Revenue Profile

- FY2002 Jurisdictional Revenues: $10,038,765,864
  - Electric $5,771,618,438
  - Telecommunications $3,198,123,588*
  - Natural Gas $978,038,778
  - Water and Wastewater $59,710,091**
  - Transportation $31,274,969***

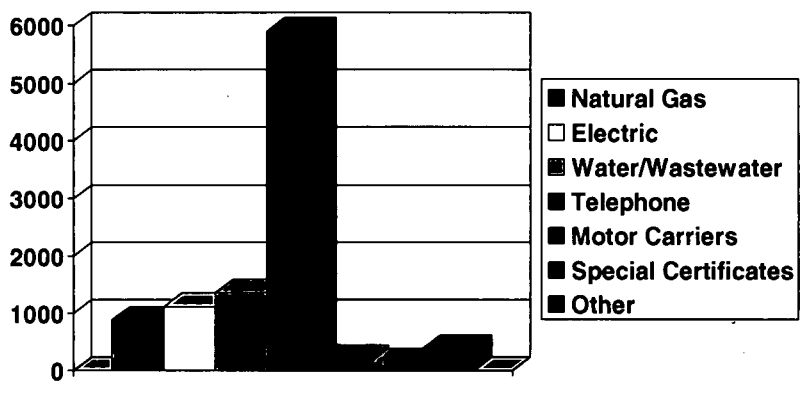
Filings & Orders by Industry Group

(Calendar Year 2002)

	Filings	Orders
▪ Electric	1,114	260
▪ Telephone	5,906	977
▪ Natural Gas	882	171
▪ Water/Wastewater	1,366	539
▪ Motor Carriers	211	137
▪ Special Certificates	134	144
▪ Other	377	80
▪ Total	9,990	2,308

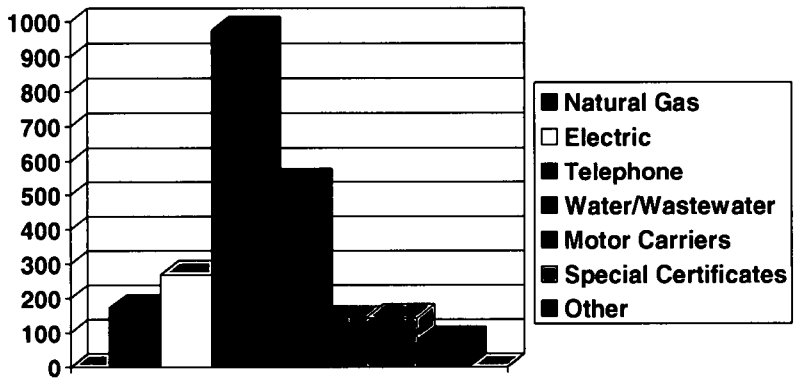
Filings by Industry Group

(Calendar Year 2002)



Orders by Industry Group

(Calendar Year 2002)



Industry Specific Overview

- I. Electric Industry
- II. Natural Gas Industry
- III. Telecommunications Industry
- IV. Transportation Industry
- V. Water and Wastewater Industry
- VI. Selected Financial and Operational Data

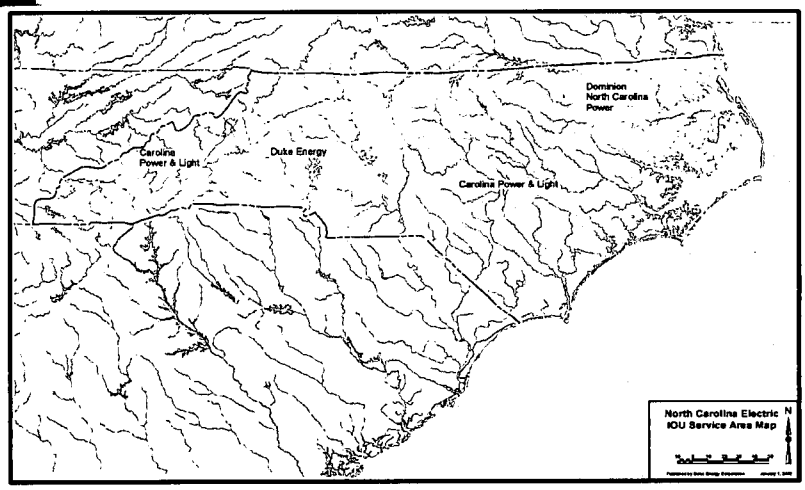
I Electric
Basic Facts: Regulated Electric Utilities

- 3 Investor-Owned Utilities (IOUs)
  - Duke Energy, through Duke Power and Nantahala Power & Light - 1,669,000 customers in Piedmont and Western North Carolina
  - Progress Energy Carolinas - 1,132,000 customers in Eastern and Western North Carolina
  - North Carolina Power - 115,000 customers in Northeastern North Carolina
- 2 University-Owned Utilities
  - New River Light and Power, Boone
  - Western Carolina University, Cullowhee

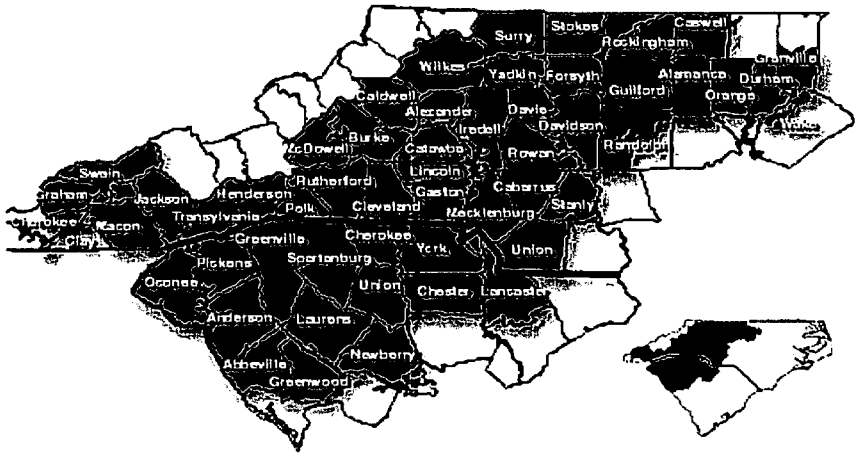
Basic Facts:
EMC and Municipal-Owned

- 32 Electric Membership Corporations (EMCs) - 860,000 customers
- 71 Municipal-owned electric distribution systems - 500,000 customers
- Limited NCUC jurisdiction over EMCs and Munis:
  - Service complaint jurisdiction over EMCs *(G.S. 62-42)*
  - Monitor subsidiary business activities of EMCs to prevent subsidization by electric customers *(G.S. 117-18.1)*
  - EMC territorial assignment issues *(G.S. 62-110.2)*
  - Certification authority for construction of electric generating facilities *(G.S. 62-110.1)*
  - Certification authority for construction of electric transmission lines of 161+ KV *(G.S. 62-101)*
  - Safety jurisdiction over gas pipeline facilities operated by municipalities and similar entities *(G.S. 62-50)*

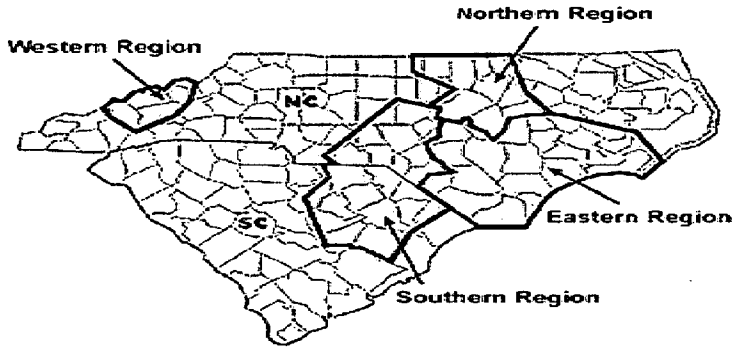
North Carolina Electric IOU Service Area



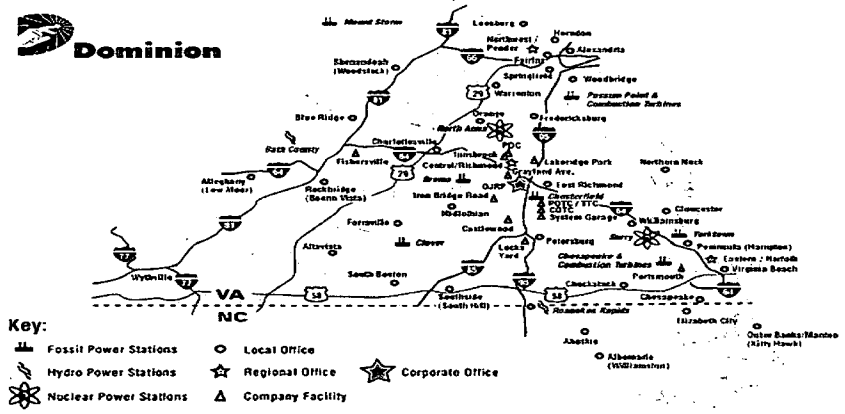
Duke Power Service Area



Progress Energy NC & SC Service Area



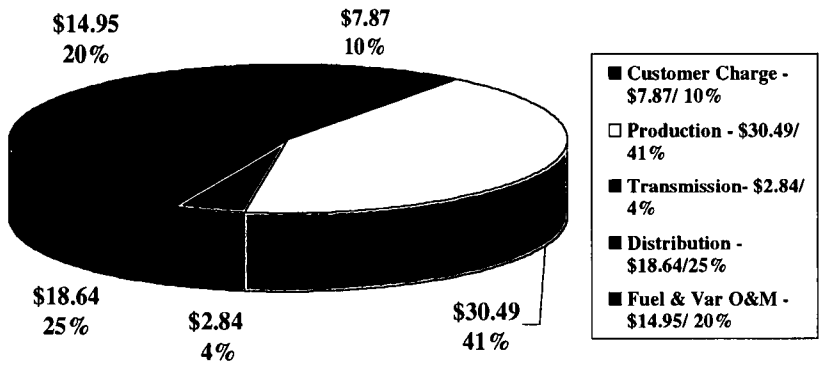
NC Power Service Area



Duke Power

Typical Residential 1,000 kWh Monthly Bill (1/1/03)

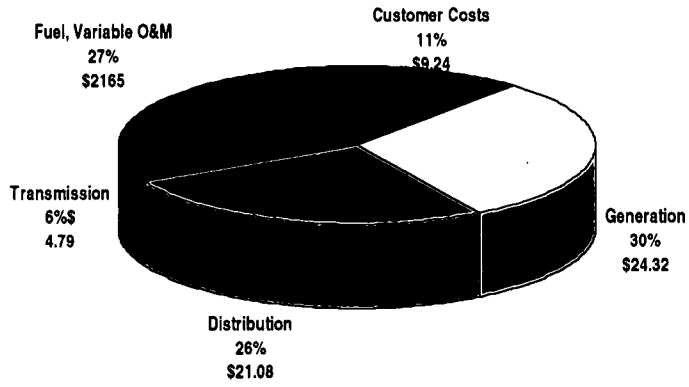
Total: $74.80



Progress Energy

Typical Residential 1,000 kWh Monthly Bill (1/1/03)

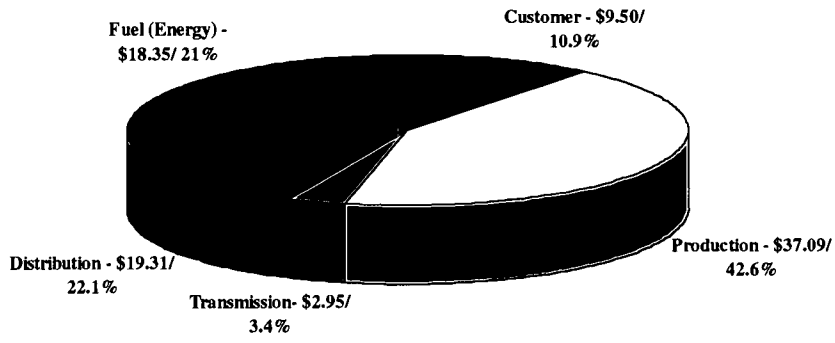
Total $81.08



North Carolina Power

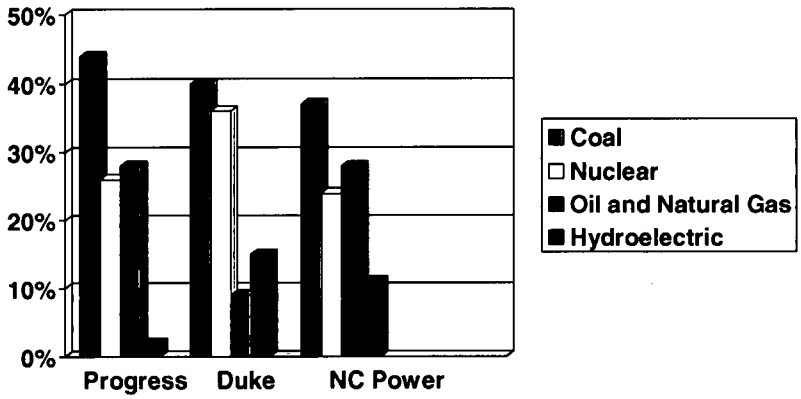
Typical Residential 1,000 kWh Monthly Bill

Total: $87.20



Note: Bill shown is weighted average of summer monthly bill and base monthly bill. Bill includes gross receipts tax but excludes any other state or local taxes.

Generating Capacity by Fuel Type



Projected Reserve Margins 2002-2012

Company	Reserve Margins
Progress	12.4 – 15.1%
Duke	17.0 – 19.3%
NC Power	12.5 – 14.3%

Basic Facts: Fuel Mix Shift - Pros and Cons to Natural Gas

Pros	Cons
•Domestic fuel source – decreased dependence on foreign fuel resources	•Reduced fuel diversity- increased dependence on one primary fuel
•Lower capital costs	•Same trend across the country – growing demand
•More environmentally friendly, thus lower compliance costs than displaced fuel (coal, oil)	•Higher incremental production costs than coal
•Transportable and storable	•Supply unknown & limited storage (presently)
	•More susceptible to price volatility

Retail Electric Competition

- General Assembly decides whether electricity markets will be competitive
- In 1997, General Assembly formed Study Commission on the Future of Electric Service in NC to examine this issue
- In May 2000, the Study Commission adopted a tentative schedule for implementing retail competition by 2006
- National move towards retail competition has slowed dramatically---some states have retrenched from earlier aggressive positions

II Natural Gas
Basic Facts: Industry Structure

- Three parts of natural gas industry
  - Exploration and production (E&P)
  - Interstate transmission
  - Local distribution (LDCs)
- E&P companies not price-regulated
- Interstate pipeline rates fixed by FERC
- LDCs regulated by state commissions

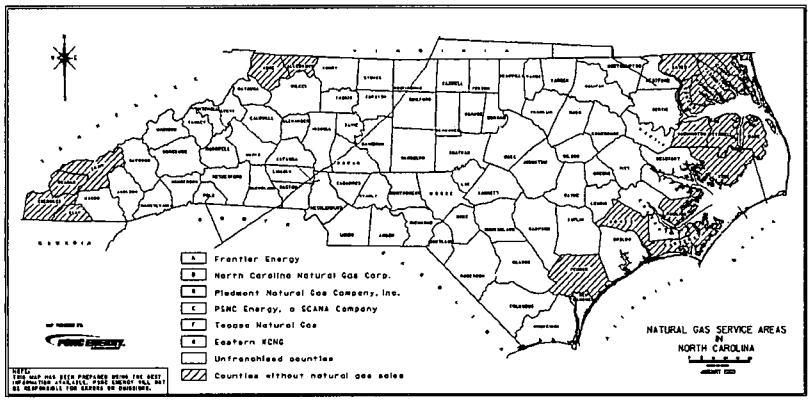
Basic Facts: Natural Gas Utilities

- Six Local Distribution Companies (LDCs)
  - Piedmont Natural Gas Company, Inc.
  - Public Service Company of N.C., Inc.
  - North Carolina Natural Gas Corp.
  - Frontier Energy, LLC
  - Toccoa Natural Gas
  - Eastern N.C. Natural Gas Company
- One Intrastate Gas Pipeline
  - Cardinal Pipeline Company, LLC
- Eight Municipal Gas Systems (not regulated by NCUC)
- Transco is single, major interstate pipeline
- Legislatively mandated, recent rapid expansion into unserved areas

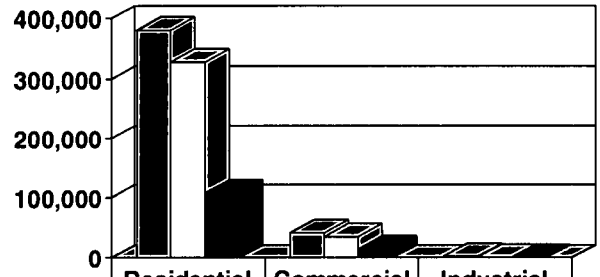
Basic Facts: Recent LDC Mergers and Acquisitions

- In 1999, NCNG was acquired by CP&L (now Progress Energy)
- In 1999, Public Service was acquired by SCANA Corporation
- In 2002, NUI North Carolina Gas was acquired by Piedmont
- Application is now pending for NCNG and one-half ownership interest in Eastern NCNG to be acquired by Piedmont

Local Distribution Companies' Service Territories



Local Distribution Companies' Customer Profile



	Residential	Commercial	Industrial
▣ Piedmont	381,557	42,176	1,824
□ PSNC	327,706	34,717	414
■ NCNG	108,398	14,302	489

State Regulatory Framework for Local Distribution Companies

Certification

- NCUC issues certificates defining LDC service territories
- Certificate obligates holder to provide adequate service at reasonable rates
- LDC must provide adequate service to some portion of each county in certificated area within three years
- If adequate service not provided within three years, Commission orders certificate forfeited

State Regulatory Framework for Local Distribution Companies *cont.*

Rates

- NCUC establishes level of base rates
- LDCs may file purchased gas adjustment proceedings at any time to adjust gas cost portion of rates prospectively
- NCUC conducts annual prudency review of each LDC to compare prudently incurred costs with costs actually recovered from customers and orders increments or decrements to "true up" under-recoveries or over-recoveries

Current Issues: Expansion into Unserved Areas

- Ten years ago, one third of NC counties were unserved
- General Assembly established Natural Gas Expansion Fund in 1991
  - Allows LDCs to subsidize uneconomic expansion projects using refunds from interstate pipeline suppliers and other sources
- General Assembly authorized $200 million bond issuance for natural gas expansion in 1998
- Service has been extended, or is being extended, to 30 counties using these mechanisms
- Only 4 counties remain without service or plans for service

Current Issues: Gas Wholesale Price Volatility

- Natural gas has become a very volatile commodity
- In the 2000-2001 Winter, wholesale gas prices rose dramatically
- NCUC provided guidance to LDCs regarding hedging
- Recently, gas prices have begun another sudden increase
- NCUC has asked the three largest LDCs to meet March 17, 2003, to discuss the current price run-up

III Telecommunications Basic Facts

- 16 Incumbent Local Exchange Companies (ILECs)
  - 8 ILECs price-plan regulated
  - 8 ILECs rate-of-return regulated
- 197 Competing Local Providers (CLPs)
  - May lower or raise rates on 14 days' notice
- 430 Interexchange Long Distance Carriers (IXCs)
  - May lower or raise rates on 14 days' notice

Basic Facts: Telecom Utilities *cont.*

- 304 Payphone Service Providers (PSPs)
- 23 Shared Tenant Services (STS)
- Commission does not regulate:
  - Telephone Membership Corporations
  - Cable and Satellite
  - Commercial Mobile Radio Service *(includes cellular and pagers)*
  - Data and Internet Service Providers

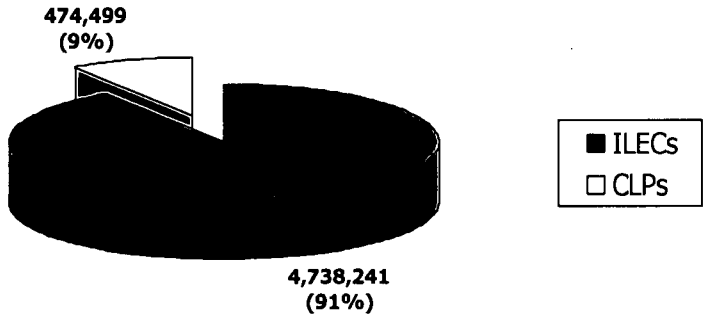
Basic Facts: North Carolina ILECs

- Largest NC Incumbent Local Exchange Companies (ILECs):
  - BellSouth - 2,362,400 access lines
  - Carolina Telephone (i.e. Sprint) - 1,193,945 access lines
  - Verizon South - 342,535 access lines
  - Central Telephone (i.e. Sprint) - 276,397 access lines
- Other 12 ILECs serve total of 562,964 access lines in NC

Basic Facts: North Carolina CLPs

- 197 Competitive Local Providers (CLPs) certified to provide local exchange service in NC
- 474,499 access lines served by CLPs *(Dec. 2002)*
  - 70,381 residential
  - 404,118 business

Basic Facts:
Access Lines Served by ILECs & CLPs

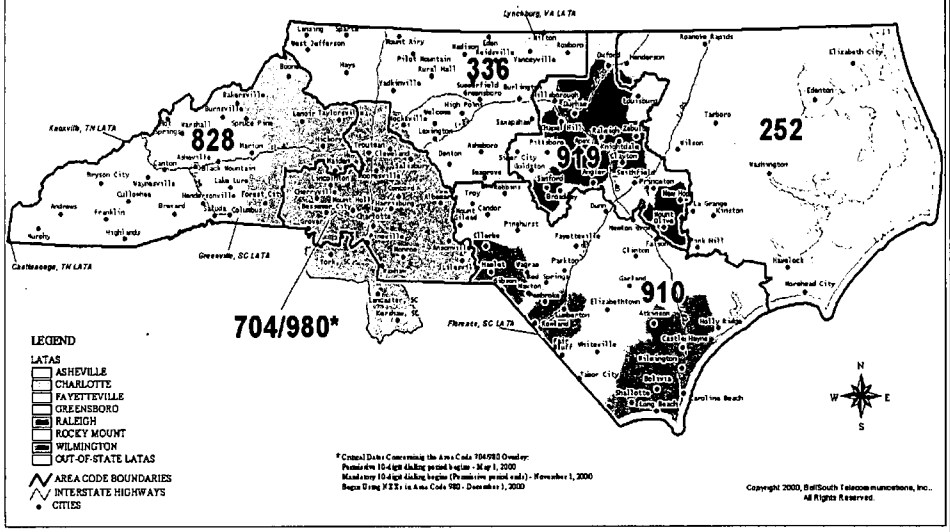


Basic Facts:
North Carolina Area Codes

Area Code	Exhaust Date*
919	3rd Qtr. 2005
336	2nd Qtr. 2006
252	1st Qtr. 2007
910	1st Qtr. 2008
828	3rd Qtr. 2011
704/980	4th Qtr. 2017
919/984	2nd Qtr. 2032

** Exhaust dates are current projections and change regularly.*

North Carolina - Area Code Map



IV Transportation Basic Facts

- Motor Carriers of Household Goods
  - 198 Certificated Movers
  - New Certification Regulations Effective January 1, 2003
  - Maximum Rate Tariff Effective January 1, 2003
- Regular Route Passenger Carriers
  - 7 Certificated Bus Companies
  - Provides Passenger Service over Regular Routes
- Passenger Brokers
  - 29 Broker's Licenses
  - Brokers Tours and Trips with Existing Bus Companies
- Ferryboat Operators
  - 14 Certificated Ferry Boat Operators
  - Passenger Transportation Via Water

V Water and Wastewater Basic Facts

- Anyone furnishing water to the public for compensation or operating a public sewerage system for compensation is a public utility *(G.S. 62-3(23)a.2)*

- Regulation does not include –
  - Operations with less than 15 residential customers
  - Municipal or County systems
  - Sanitary Districts
  - Mobile Home Parks (where water/wastewater included in rent)
  - Homeowners' Associations
  - Nonprofit and consumer owned corporations

Basic Facts: Water/Wastewater Utilities

- NCUC grants certificates for specific service area and regulates rates and service aspects of utility operation

- NCUC does not regulate drinking water quality; requires compliance with DENR, Division of Environmental Health regulations

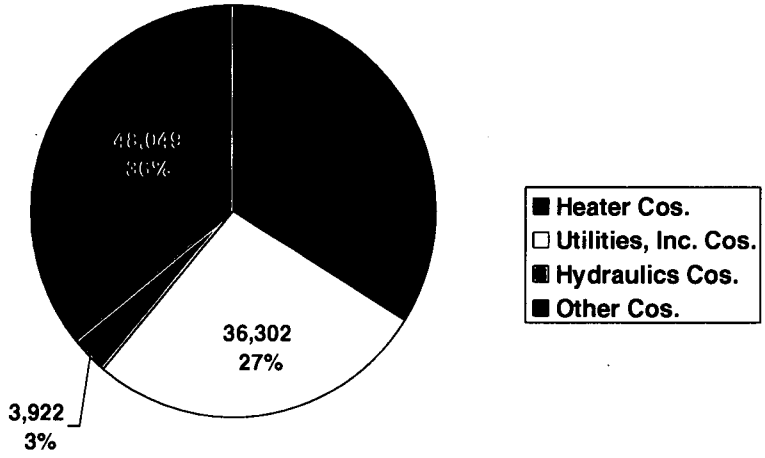
- NCUC does not regulate discharge of sewage being treated, but requires compliance with DENR, Division of Water Quality regulations

Basic Facts: Water/Wastewater Utilities

- Traditional Companies
  - 69 Water and Wastewater
  - 105 Water only
  - 45 Wastewater only
  - 133,633 Water and 62,218 Wastewater customers
- Resale Companies
  - 150 Water and Wastewater
  - 66,525 Water and Wastewater customers
- Traditional and Resale combined - 1,886 systems

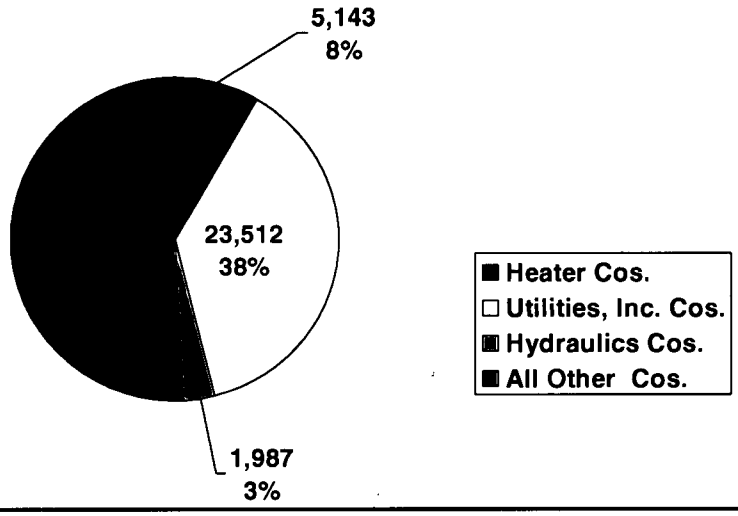
Basic Facts: Water

Distribution of 133,633 Traditional Water Customers



Basic Facts: Wastewater

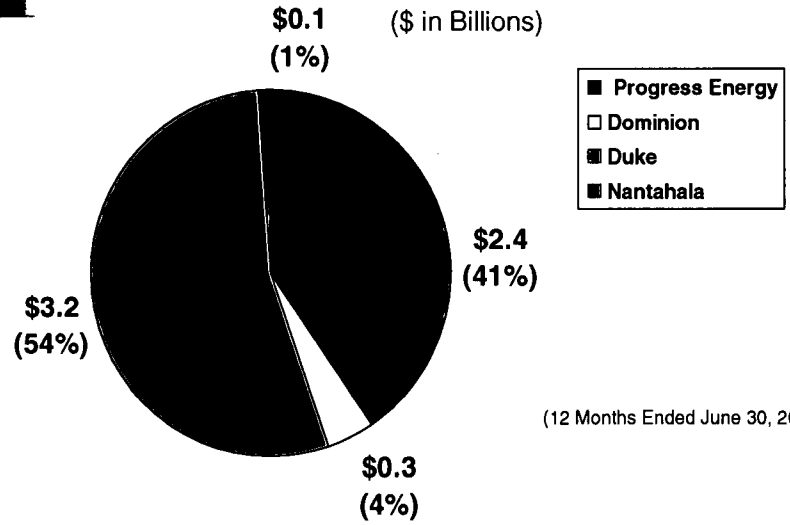
Distribution of 62,218 Traditional Wastewater Customers



VI Financials

Operating Revenues by Electric Utility ($6B Total)

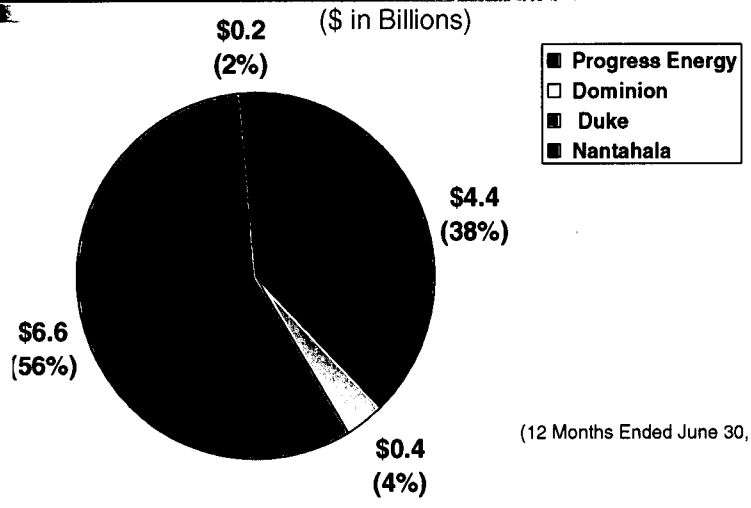
($ in Billions)



(12 Months Ended June 30, 2002)

Net Plant Investment by Electric Utility ($11.6B Total)

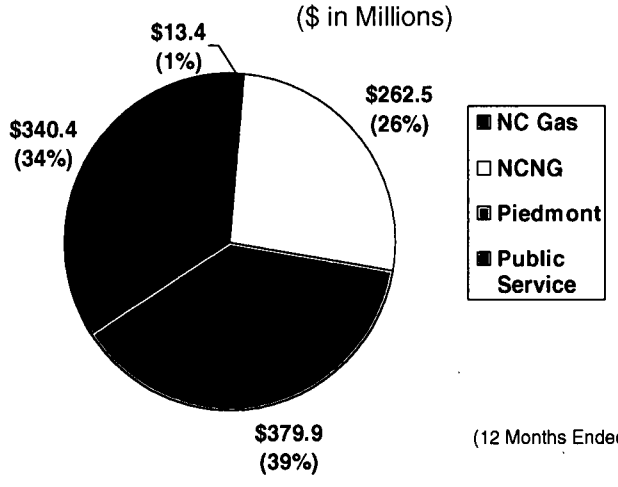
($ in Billions)



(12 Months Ended June 30, 2002)

Operating Revenues by Natural Gas Utility ($996.2M Total)

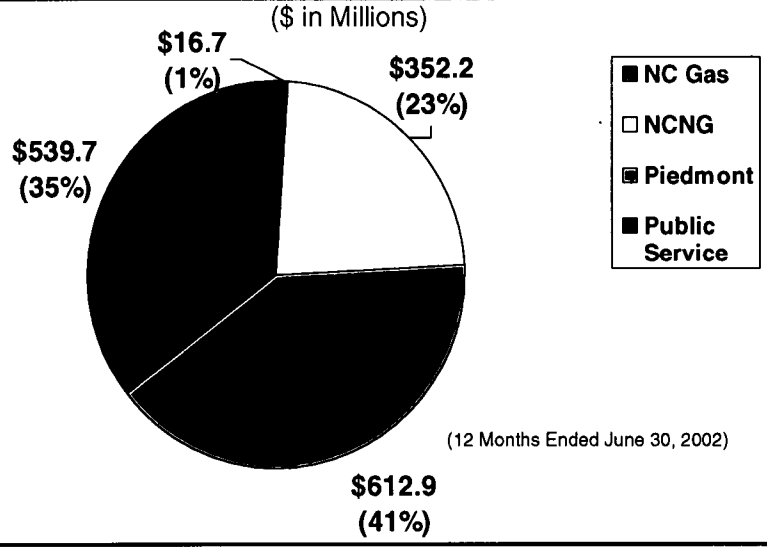
($ in Millions)



(12 Months Ended June 30, 2002)

Net Plant Investment by Natural Gas Utility ($1,521.5M Total)

($ in Millions)



(12 Months Ended June 30, 2002)

Telephone Utilities: Operating Revenues

(10 Largest Local Exchange Companies)

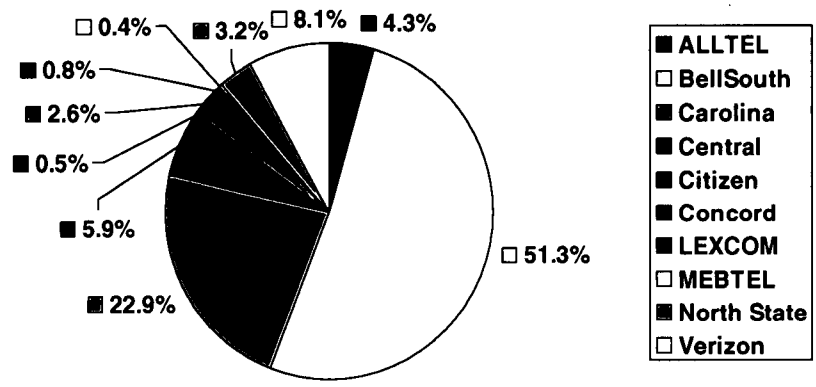
($ in Millions)

BellSouth	$ 1,255.7
Carolina	559.5
Verizon	198.0
Central	143.3
ALLTEL	106.6
North State	79.0
Concord	63.3
LEXCOM	20.5
Citizens	11.3
MEBTEL	8.8
Total	$2,446.0

(12 Months Ended December 31, 2001)

Operating Revenues

(10 Largest Local Exchange Companies – Percentages)



(12 Months Ended December 31, 2001)

Telephone Utilities: Net Plant Investment

(10 Largest Local Exchange Companies)

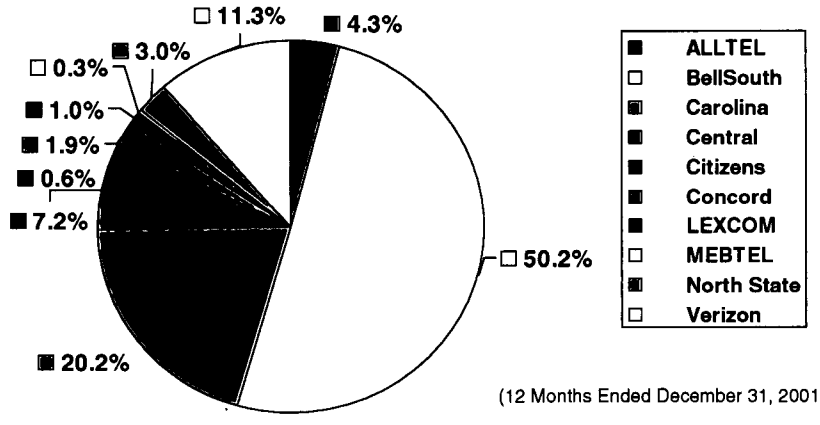
($ in Millions)

BellSouth	$ 1,932.8
Carolina	779.7
Verizon	433.5
Central	278.1
ALLTEL	165.0
North State	114.8
Concord	74.0
LEXCOM	38.8
Citizens	23.2
MEBTEL	10.8
Total	$ 3,850.7

(12 Months Ended December 31, 2001)

Net Plant Investment

(10 Largest Local Exchange Companies – Percentages)



(12 Months Ended December 31, 2001)

Major Issues

- Electricity
  - Transmission, nuclear waste disposal, Smokestack Bill & other environmental issues, Green Power, wholesale/retail competition, large municipal debt
- Telecommunications
  - Slow transition to competitive marketplace, market failures, broadband deployment, service quality, Universal Service
- Natural Gas
  - Price volatility, supply, dominant position as fuel source for new generation, infrastructure expansion
- Water & Wastewater
  - Supply, environmental issues, industry consolidation
- Generic
  - Financial market pressures, storm impacts, emergency preparedness, accounting issues, merger conditions, tension at intersection of regulated and competitive activities of regulated companies

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 25, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Toney	Sen Kerr
Rob Dasgblow	NC State Watch
Camille Stell	Kennedy Covington
Roy Ericson	Utilities Commission Staff
Jolola Brown-Bland	NCUC Commission Staff
Chris Nichols	Hunton + Williams
Dan Wascott	Sprint
Jeffrey L. Davis	NCUC - Public Staff
Cynthia Smith	NCUC - Public Staff
Ben Turner	NCUC - Public Staff
CAROL STAHL	NCUC - PUBLIC STAFF

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 25, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Lee	NCUC Public Staff
Bob Gillam	NCUC Public Staff
Nat Carpenter	NCUC Public Staff
Tony Wike	NCUC Public Staff
Jim Kerr	NCUC
[signature]	PEPNC
[signature]	Progress Energy
Beatrice Williams	CUCA

AGENDA

SENATE COMMERCE COMMITTEE
Tuesday, April 1, 2003 at 11:00 AM
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Presentation

- Presentation by Mr. James Fain, Secretary, Department of Commerce

III. Bill

- SB 355 Wake Forest Force Limit Sen. Stevens

IV. Other Business

V. Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, April 1, 2003 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, April 1, 2003, in Room 1027 of the Legislative Building. Fifteen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles opened the meeting by announcing the committee would consider Senate Bill 355, Wake Forest Force Limit, sponsored by Senator Richard Stevens. Senator Stevens was introduced to explain the bill. Senator Forrester moved for a favorable report. Senator Soles asked for comments from the audience. Mr. Dave Simpson, representing the Association of General Contractors, said they opposed the bill, stating that independent contractors could do the work more quickly and would be more accountable. Mr. Henry Jones, representing the Electric Contractors, said they opposed the bill, stating that the members of his organization believe in the competitive bidding process. A vote was taken and the motion carried.

Senator Soles introduced Mr. James Fain, Secretary of the Department of Commerce. Mr. Fain spoke about four cornerstones of the Department's commitment to develop the state's economy: (1) building communities attractive to businesses, (2) insuring a globally competitive workforce, (3) making the business climate attractive to businesses, and (4) communicating how we can invest in science and technology assets in our universities and transfer the developed technology to the marketplace.

Secretary Fain identified three initiatives to assist in economic development in the state: (1) utilizing the commitment of President Molly Broad of the University of North Carolina System for the university system to serve the state in support of economic development, (2) building on our scientific strengths, particularly in the area of biotechnology, and encouraging both research and manufacturing, and (3) capturing an automobile assembly plant to build on the automotive industry already existing in the state and to provide displaced manufacturing employees with a new employment opportunity.

Finally, Secretary Fain identified the Department's wish list: (1) resources to enhance their business recruiting website, (2) building a "thinking" capacity within the Department to plan for five years from now, and (3) taking a western regional service center supported by an Appalachian Regional Commission (ARC) grant state-wide to provide services to existing businesses on a 24 hours a day, 7 days a week basis. He added that the Focused Industrial Training (FIT) funds in the community college budget are important to the latter.

The meeting adjourned at 11:55 a.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, April 01, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **355** Wake Forest Force Limit.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 355*

Short Title:	Wake Forest Force Limit.	(Local)
Sponsors:	Senators Stevens; Carrington, Malone, and Reeves.	
Referred to:	Commerce.	

March 11, 2003

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF WAKE FOREST TO USE TOWN LABOR FOR PHASED CONSTRUCTION OF ELECTRICAL DISTRIBUTION FEEDER CIRCUITS AND FOR CONSTRUCTION OF AN ELECTRIC SUBSTATION WITHOUT REGARD TO THE DOLLAR VALUE OF THE LABOR.

The General Assembly of North Carolina enacts:

SECTION 1. The Town of Wake Forest may use qualified labor on the permanent payroll of the Town for the following projects without regard to the dollar limitations contained in G.S. 143-135:

(1) Electrical distribution feeder circuits, to be built in phases.

(2) Electrical Substation.

SECTION 2. The project listed in subdivision (1) of Section 1 of this act is only covered by Section 1 of this act if construction on the first phase begins no later than December 31, 2003. The final phase must commence construction no later than December 31, 2009, in order to be covered by Section 1 of this act.

SECTION 3. The project listed in subdivision (2) of Section 1 of this act is only covered by Section 1 of this act if construction on the first phase begins no later than December 31, 2006.

SECTION 4. This act is effective when it becomes law.

SENATE BILL 355:
Wake Forest Force Limit

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Stevens
Date:	April 1, 2003	**Summary by:**	Wendy Graf Ray
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 355 would allow the Town of Wake Forest to use Town labor for two construction projects without regard to dollar limits set out in the North Carolina General Statutes regarding public construction contracts.***

CURRENT LAW: Article 8 of Chapter 143 of the General Statutes sets out requirements for the bidding of public contracts. G.S. 143-135 exempts from the requirements of Article 8 construction or repair work undertaken by the State or subdivisions of the State when both of the following apply:

- The work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned.
- Either the total cost of the project does not exceed $125,000, or the total cost of labor on the project does not exceed $50,000.

BILL ANALYSIS: Senate Bill 355 would allow the Town of Wake Forest to use qualified labor on the payroll of the Town, without regard to the dollar limitations set out in G.S. 143-135, on the following projects:

Electrical distribution feeder circuits, to be built in phases. The act only applies to this project if construction on the first phase begins no later than December 31, 2003, and applies to the final phase only if construction on that phase begins no later than December 31, 2009.

Electrical Substation. The act only applies to this project if construction begins no later than December 31, 2006.

EFFECTIVE DATE: The act would be effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 1, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David M. Barnes	Poyner Spruill LLP
Paul A. Johnson	CHA
Patrice Roesler	NAIOP
[illegible]	Parker, Poe, Adams & Bernstein, LLP
Chad Essick	Edmisten & Webb
Beau Mills	NC Metropolitan Coalition
[illegible]	NCRA
Roger Bone	Bone and Assoc.
Edwin Wilson	Hemophilia of N.C.
Michael Thompson	Dominion NC Power
Steve Woodson	NC Farm Bureau

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 1, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lucius Pullen	Attorney
Robert Bridges	Town of Wake Forest
Chris Malone	Town of Wake Forest
Roger Knight	Town Athy - Town of Wake Forest
Roe O'Donnell	Town of Wake Forest
Mark Williams	Town of Wake Forest
Dilly Simpk	Cmc Uniwt Aoc
Henry Jones	Attorney - Raleigh
Jolin Goodman	Mercer Assoc.
Daniel A. Seaborne	Dept of Commerce
Katherine Davis	Electric Cities

AGENDA

SENATE COMMERCE COMMITTEE
Tuesday, April 8, 2003 at 11:00 AM
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Bill

- SB 437 General Contrs. Board/Est. Temp Rules/Bidding Senator Hoyle

III. Presentation

- Presentation by Mr. Jim Long, Commissioner of Insurance

IV. Other Business

V. Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, April 8, 2003 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, April 8, 2003, in Room 1027 of the Legislative Building. Twelve members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles opened the meeting by introducing the pages: Heather Moore from Bessemer City, sponsored by Senator Hoyle; and Wells Struble from Raleigh, sponsored by Senator Reeves.

Senator Soles introduced Senator Hoyle to explain the Senate Bill 437, Gen. Contrs. Board/Est. Temp. Rules/Bidding. Senator Purcell moved a favorable report of the bill. Senator Sloan asked to be excused from voting on the bill because he holds an electrical license. The motion carried.

Senator Soles introduced Mr. Jim Long, Commissioner of Insurance, to make a presentation about the Department of Insurance. Mr. Long provided a document entitled "North Carolina Department of Insurance, 2001-2002 Biennial Report" (copy attached), and reviewed the highlights of the report.

Senator Soles announced the committee would be meeting twice a week preparing for the crossover deadline on April 24.

The meeting adjourned at 11:25 a.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, April 08, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **437** Gen. Contrs. Board/Est. Temp. Rules/Bidding.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 437

Short Title:	Gen. Contrs. Board/Est. Temp. Rules/Bidding.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Commerce.	

March 17, 2003

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE LICENSING BOARD OF GENERAL CONTRACTORS TO ESTABLISH TEMPORARY RULES THAT ALLOW A LICENSEE TO BID AND CONTRACT DIRECTLY WITH THE OWNER OF A PUBLIC BUILDING PROJECT IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Licensing Board of General Contractors may adopt rules allowing a licensee under Article 2 or 4 of Chapter 87 of the General Statutes to bid and contract directly with the owner of a public building project if: (i) a licensed general contractor performs all work that falls within the classifications in G.S. 87-10(b) and the Board's rules; and (ii) the total amount of the work classified does not exceed a percentage of the total bid price pursuant to rules established by the Board.

Notwithstanding any other provisions of law to the contrary, the Board may adopt temporary rules to implement this section pursuant to G.S. 150B-21.1.

SECTION 2. This act is effective when it becomes law.

SENATE BILL 437:
Gen. Contrs. Board/Est. Temp. Rules/Bidding

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Hoyle
Date:	April 8, 2003	**Summary by:**	Wendy Graf Ray
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 437 would allow the North Carolina Licensing Board of General Contractors to adopt rules that allow licensed plumbing and heating contractors and licensed electrical contractors to bid directly on public building projects in certain circumstances.

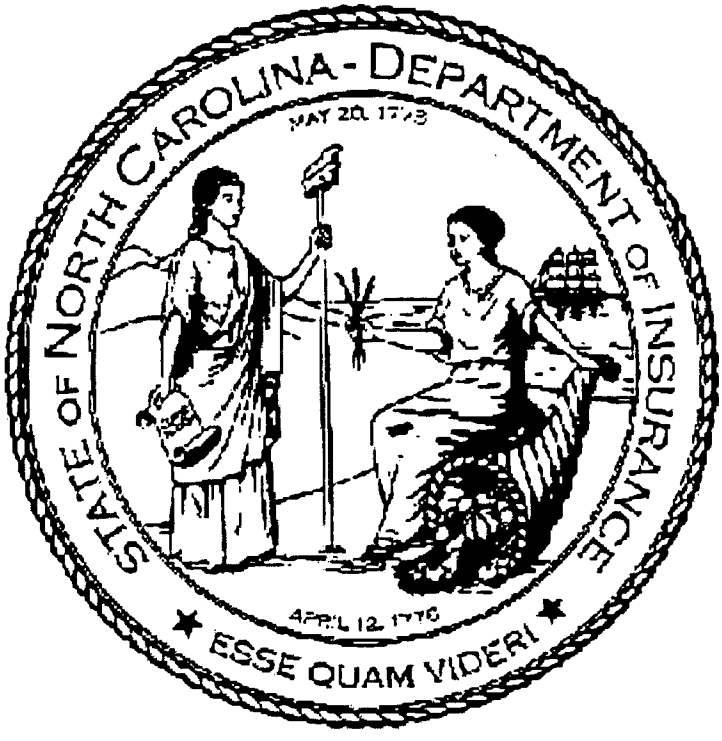
CURRENT LAW: Under the current law in North Carolina, only a licensed general contractor can bid directly on a public construction project that includes a variety of work to be performed by different subcontractors. Licensed plumbing and heating contractors and licensed electrical contractors are only permitted to bid directly on a project if 100% of the work to be done fits within their trade specialty. For example, if a public construction project involved 90% electrical work and only 10% general contracting work, the bid would still have to come from a general contractor, who would then subcontract the majority of the work out to an electrical contractor.

BILL ANALYSIS: Senate Bill 437 would allow the North Carolina Board for General Contractors to adopt a rule to allow licensees under Article 2 (Plumbing and Heating Contractors) or Article 4 (Electrical Contractors) of Chapter 87 of the General Statutes to bid and contract directly with the owner of a public building project if both of the following apply:

- A licensed general contractor performs all of the work that falls within the classifications for licensed general contractors, as set out in G.S. 87-10(b), and the Board's rules.
- The total amount of work to be performed by a general contractor does not exceed a specific percentage (to be established by the Board) of the total bid price.

BACKGROUND: The Board did adopt a rule in 2001 allowing contractors who were not licensed as general contractors to bid directly on public building projects if the general contracting work was performed by a licensed general contractor and the amount of work to be performed by a general contractor did not exceed 25% of the total amount of the bid. However, the rule was rejected by the Administrative Rules Review Commission on the grounds that the Board did not have the statutory authority to adopt such a rule. Senate Bill 437 would give the Board the authority it needs to adopt this rule as planned.

EFFECTIVE DATE: The act would be effective when it becomes law.



North Carolina Department of Insurance

2001-2002 Biennial Report

Jim Long
Insurance Commissioner

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Department of Insurance Mission Statement

The North Carolina Department of Insurance serves the citizens of North Carolina through consumer protection and education, safety training and promotion, and regulation of specified activities and industries.

This is accomplished by:

- Assuring an optimum marketplace in which consumers can readily purchase fairly-priced insurance products from sound, responsive entities;
- Educating the public in loss prevention, safety awareness and developing life safety standards;
- Maintaining a well-managed, fiscally-responsible organization staffed by knowledgeable, courteous, professional employees.

At all times, the affairs of the department are conducted in an open, ethical manner and in the best interests of the public.



Jim Long,
Commissioner of Insurance

Company Services Group

The Company Services Group consists of five divisions: Financial Evaluation, Actuarial Services, Information Systems, Administrative Supervision and Estate Operations.

The Financial Evaluation Division monitors the solvency of insurance companies; reviews admission of out-of-state, domestic and surplus lines companies seeking to do business in the state and audits domestic and foreign insurance organizations.

The Actuarial Services Division assists in the review of rate, form and statistical filings. The division also conducts actuarial studies for financial evaluation work and is involved in special projects and studies.

The Information Systems Division manages the Department's information technological resources, which include data processing, word processing, office automation, data communications and voice communications.

The Administrative Supervision Division monitors the financial condition and operations of domestic insurance companies to determine whether a troubled entity can be prevented from going into formal delinquency proceedings by returning the insurer to a sound financial condition and business practices.

The Estate Operations Division works closely with the Administrative Supervision Division to evaluate the necessity of instituting formal delinquency proceedings and to provide guidance to troubled insurers after leaving administrative supervision.

Financial Evaluation Division

The Financial Evaluation Division is comprised of the Company Admissions Section, the Financial Analysis Section, the Financial Examination Section and the Continuing Care Retirement Communities Section. The Division regulates all authorized insurers, entities that self-insure for workers' compensation, certain third party administrators, managing general agents, accredited reinsurers and continuing care retirement communities for compliance with the solvency laws of this state. The ultimate objective of this regulation is to reduce the likelihood of any of these entities failing or to mitigate the effect of any of these entities' insolvency on the consumers of this state.

Company Admissions Section

The primary responsibility of this section is the evaluation of the financial condition of insurance companies applying for initial licensing, or other type of authority to transact insurance business in North Carolina.

It is important that insurance entities meeting or exceeding the minimum requirements be licensed or authorized so that adequate and competitive markets are available to North

Carolina insurance consumers. It is equally important that any entity not meeting the minimum requirements be denied a license or authority in order to protect North Carolina insurance consumers from potential insurer insolvencies.

At the beginning of 2001, this section began processing applications for admission of insurance companies through the uniform certificate of authority process developed by the NAIC. This process involves the same financial and related information being filed in multiple states to support initial licensing. Although the information filed is the same in all states, the decision to approve initial licensing in North Carolina and the other individual states is based upon the admission statutes in each individual jurisdiction. At the end of 2002, all 50 states and the District of Columbia participated in the uniform certificate of authority application process.

During the 2001-2002 biennium, insurance companies continued to demonstrate considerable interest in establishing business in North Carolina. During the last two years, 87 new applications were received.

A total of 52 insurance entities were found to satisfy North Carolina admission requirements and received initial certificates of authority during the biennium. This number included the formation of one North Carolina domestic insurance company.

The section is also responsible for the initial review of insurance companies applying for eligibility for the placement of surplus lines business. The surplus lines market is for insurance products that are not readily available to consumers through licensed companies.

During the 2001-2002 biennium, the section received and reviewed 8 filings for surplus lines eligibility. Eight new companies were found to qualify.

Additionally, the section is responsible for reviewing applications for accredited reinsurer status in North Carolina. During 2001-2002, seven filings were received and seven companies were found to satisfy the statutory requirements.

The section is responsible for the financial review of risk retention groups filing for initial registration. It is also responsible for making the initial determination that purchasing groups satisfy the requirements for registration. These entities operate under the authority of the Federal Risk Retention Act and North Carolina Insurance Statutes governing liability risk retention. The federal act permits risk retention groups and purchasing groups to provide certain types of liability insurance coverage to their members if the group is properly licensed in at least one state and files certain minimal financial information with each state in which it desires to do business.

We have required as much information as allowed under the federal act in order to evaluate the merits of risk retention group filings. North Carolina statutes require a purchasing group to buy its coverages from an insurance company that is either licensed or eligible for surplus lines business in this state.

During the biennium, 14 filings for initial registration were received from risk retention groups and 31 initial filings were received from purchasing groups. 14 risk retention groups and 31 purchasing groups received initial registration during the period.

Financial Analysis

The primary responsibility of this section is to monitor the solvency of all insurance organizations authorized by the Department. Monitoring the financial condition of insurance organizations is accomplished by reviewing the financial position and operating results of each insurance organization through financial analysis systems that encompass annual and interim financial statements and other financial data. A conclusion is reached on the financial health of each insurance organization and the required steps are taken to safeguard the interests of North Carolinians. The financial analysis process utilizes the database and programs of the National Association of Insurance Commissioners and systems, which have been developed in-house.

The section also processes renewal license applications of insurance organizations and oversees corporate changes in insurance organizations (i.e. acquisitions, mergers, dissolutions, charter changes, bylaw changes and Holding Company Act filings).

In addition, Financial Analysis oversees the administration of security deposits from insurance organizations. These deposits are required of insurance organizations for the protection of policyholders. The funds are maintained by Wachovia Bank, N.A. under a safekeeping agreement and total approximately $545 million at present. Most of the functions of the collateral securities program are computerized, allowing rapid processing of transactions and better monitoring of the quality of securities on deposit.

Performance Indicators

	2001-2002	2000-2001
Insurance organizations regulated	2,292	2,316
Financial statements analyzed	14,325	14,475
Audited financial statements reviewed	1,595	1,597
Insurer licenses suspended	2	7
Insurer licenses revoked	2	2
Administrative actions	87	74
Securities on deposit for policyholder protection	$545,000,000	$540,000,000
Certificates of good standing, deposit, etc., processed	5,500	5,000

Financial Examination

This section serves as a complement to Financial Analysis. The section conducts varying types of audits ranging from full examinations to examinations of very specific issues. The latter usually involves the resolution of issues that can not be resolved during the financial analysis process. Practices and procedures have been developed by this section, the Financial Evaluation Division and the National Association of Insurance Commissioners (NAIC).

Application software sub-licensed from the NAIC is used to perform examination procedures. Also, the NAIC has endorsed audit software that will assist in automating the entire exam process. North Carolina is one of 40 states currently using or implementing this software.

Automation is of great importance; however, technological advances and the development of more sophisticated software require the section's commitment to keep hardware and software current.

Communication with the office and the NAIC is an important part of the examination process. Examiners have electronic access to both the office and to the financial information of insurance entities through the NAIC. The ability to communicate effectively while on-site is critical to conducting an efficient and effective examination.

Continuing Care Retirement Communities

The Continuing Care Retirement Communities Section has responsibility for the registration, disclosure, contracts and the financial monitoring requirements of continuing care facilities in North Carolina. Continuing Care Retirement Communities (CCRCs) are entities that provide lodging or independent living combined with health-related services under a contract for the life of the individual, or for a period in excess of one year. The section provides financial oversight and licenses these entities. Additional safeguards for facility residents and prospective residents are provided through the oversight of disclosure statements.

There are 48 licensed CCRCs in North Carolina and five under development. Currently there are almost 15,000 senior adults residing in North Carolina CCRCs.

On an annual basis, the section reviews the disclosure statement, contract and audited financial statements for all licensed CCRCs. In addition, the section works with providers/sponsors who are currently developing, or are interested in developing, new CCRCs in North Carolina for compliance with statutes and rules.

The section is also responsible for reviewing the financial statements for Third Party Administrators Risk Retention Groups and Multiple Employer Welfare Arrangements.

Actuarial Services Division

Actuarial Services assists other Department of Insurance divisions in regard to all aspects of actuarial science. Divisions that receive actuarial assistance include the:

- Consumer Services Division with consumer complaints on rate increases and with general questions concerning insurance;
- Property and Casualty Division in reviewing rate filings, loss cost filings, form filings and statistical filings;
- Financial Evaluation Division with reviewing Actuarial Opinions and Memorandums, reviewing of HMO claim reserves and various ad hoc projects;
- Field Audit Division with various claim reserve and proper accounting of reserve items;
- Managed Care Division in regard to the licensing of new HMOs and the review of expansion and material modification requests;
- Life and Health Division with reviewing individual accident and health insurance and HMO rate revisions and with the review of unusual life, annuity and health insurance products.

Other government agencies that have received actuarial assistance include the:

- State Health Plan with review of all rates submitted by HMOs;
- General Assembly's Research Division with cost estimates on proposed health and life insurance legislation and various ad hoc projects relating to actuarial science.

Life and Health Section

This Division's review of individual accident and health rate change requests saved consumers, covered under such policies, $12.2 million in 2001, and $25.1 million in 2002. Since the Division's review of rates began, consumers have realized savings of approximately $90.6 million as of December 2002.

During the biennium, Actuarial Services collected data and evaluated the impact of mandated reductions in the credit life and accident and health insurance prima facie rates. The combined savings to consumers purchasing credit insurance, is approximately $51.8 million in 2001, and $54.3 million in 2002. Since 1988, the first year of an evaluation of a prima facie rate reduction, consumers have realized savings of approximately $576.1 million as of December 2002.

Actuarial Services annually reviews the Medicare supplement insurance refund calculations submitted by insurance carriers. All carriers were correctly performing the calculations and no refunds were made for calendar year 2001. The Division continues to review all Small

Employer Group actuarial rate certifications to assure compliance with the Small Employer Group Health Coverage Reform Act.

Actuarial Services also assists in the review of licensing MEWAs and the review of their specific and aggregate maximum net retention level. During the biennium, Actuarial Services' review of renewal licensing applications resulted in some MEWAs either increasing their surplus to accommodate their specific maximum net retention levels or lowering their specific maximum net retention level.

Actuarial Services acts as the life and health risk assessment division for the Department and works closely with the Department's Financial Evaluation Division concerning claim reserve and premium rate analyses and solvency issues for HMOs and MEWAs.

Property and Casualty Section

Actuarial Services Division works closely with the Property and Casualty Division and the Financial Evaluation Division in reviewing rate filings, loss cost filings, form filings and statistical filings. Actuarial Services Division has been heavily involved in private passenger automobile rate filings, workers compensation filings and self-insured compensation funds. The Division, together with the Department counsel, prepares and presents the department's case in the public rate hearings. The Division strives to maintain rates that are not excessive to policyholders, yet adequate so as to provide a reasonable profit to companies and to protect their solvency.

In the year 2001, the North Carolina Rate Bureau filed for a +10.6 percent increase in private passenger automobile rates. As a result a public hearing called by the Insurance Commissioner, the Rate Bureau implemented a +5.0 percent increase saving the public about $166 million. Additionally, as a result of this hearing, an estimated $529 million will be held in escrow and may be refunded to consumers pending future court decisions.

In the year 2002, the North Carolina Rate Bureau filed for an increase of +5.9 percent in private passenger automobile rates. The Commissioner's order, following the hearing, was for a reduction of -17.8 percent. The North Carolina Rate Bureau subsequently implemented +5.9 percent increase. As a result of that order an estimated $202 million will be held in escrow and may be refunded to consumers pending future court decisions.

The Division reviewed a request by the North Carolina Rate Bureau for a decrease in workers' compensation loss costs of -1.2 percent to be effective in 2002. This decrease resulted in savings of about $9 million. The Division reviewed the rates for the self-insured funds domiciled in North Carolina and has assisted the Financial Evaluation Division in the financial review of these funds.

In 2002, the North Carolina Rate Bureau filed for an increase of +20.0 percent in homeowners rates. Following a consent order, +5.0 percent was implemented resulting in

savings to consumers of $142 million. The Rate Bureau proposed no rate change in the dwelling fire and extended coverage rates during this period of time.

In addition to these activities, the Division has reviewed nearly 750 individual company filings for various lines of insurance.

Information Systems Division

The Information Systems Division deals with high-technology issues and equipment in support of the Department's regulatory function. This activity, known within state government as "information resources management", includes voice, image and data processing equipment and software, as well as telecommunications systems such as two-way radios, telephones and facsimile equipment.

Day-to-day responsibilities include programming, operating, planning and managing a cluster of local area network (LAN) servers connected via the state's wide area network; and providing support for the Department's microcomputers. Internet email connects our staff with all other state departments of insurance and National Association of Insurance Commissioners (NAIC) staff, other state government agencies, numerous private insurance companies and other Internet addresses worldwide. The Information Systems Division is directly responsible for developing an integrated client/server application system on the network: consumer complaint tracking and analysis, company licensing, property and casualty rate and forms filings, and life and health rate and form filings.

Staff of the Division also work with computer programmers at State Information Processing Services (SIPS) to maintain and develop major software systems for the Department's Agent Services Division. Other smaller applications include fire incident reporting and an inventory of state property, which is self-insured by the Department.

The Information Systems Division also consults with the Department's line divisions regarding technology planning. Information Systems is the Department's representative on the Chief Information Officers Council at ITS, and represents Commissioner Long on the Information Resources Management Commission as required. Similarly, the Division exercises approval authority over all acquisitions of information and technology resources such as telephones, radios, computers, software, services and maintenance contracts.

Under the state's revised IRM structure the division will continue to perform the lead role within the Department for integrated information technology planning and management.

Administrative Supervision Division

The Administrative Supervision Division has regulatory scrutiny over potentially troubled insurance entities domiciled in North Carolina. The primary responsibility of this Division is to closely monitor the financial condition and operations of domestic insurance entities

deemed to be in a potentially hazardous financial condition. The ultimate goal of this Division is to determine whether a troubled insurance entity can be prevented from going into formal delinquency proceedings and returned to sound financial condition and good business practices.

Examples of close monitoring procedures performed by this Division include:

- financial analyses of annual and interim financial statements and other financial data, including holding company and affiliated company data;
- initiating, monitoring and enforcing workout plans designed to correct deficiencies causing the hazardous financial condition;
- targeted financial and operational examinations;
- formal administrative supervision proceedings designed to protect insurance company assets through a workout period.

Potentially troubled insurance companies are transferred to the Administrative Supervision Division via interaction with the Financial Evaluation Division and other divisions of the Department of Insurance.

Estate Operations Division

The Estate Operations Division works closely with the Administrative Supervision Division to evaluate the necessity of instituting formal delinquency proceedings and to provide guidance to troubled insurers after leaving administrative supervision. The unit's ultimate goal is to rehabilitate and/or liquidate troubled and insolvent insurers in order to protect and preserve, to the maximum extent possible, the remaining assets of the insurer for the benefit of the company's policyholders, creditors and the public.

The Estate Operations Division manages the financial and operational affairs of domestic insurance entities placed into receivership. Examples of specific duties performed include:

- marshaling assets, pursuing asset recoveries and liquidating assets of companies in receivership to the maximum benefit of policyholders and other creditors;
- managing the operations of the various departments of the insurer through a runoff period including claims, underwriting, policyholder service, data processing, accounting and personnel;
- coordinating relationships and issues involving the various state guaranty associations called upon to pay policyholder claims;
- providing litigation support services and coordinating relationships and issues involving federal and state investigative agencies outside of the Department of Insurance.

Technical Services Group

The Technical Services Group is comprised of the Property and Casualty Division, Market Examinations Division, Life and Health Division, Seniors' Health Insurance Information Program and the Managed Care and Health Benefits Division. The work performed by divisions in this group work with centers on policy issues, taking into consideration how they are implemented in insurance products and day-to-day company operations.

The Property and Casualty Division's primary responsibility is the review of rate, rule and policy form filings relating to property and casualty coverages. These filings are made by insurance companies, statutory bureaus and licensed rating organizations.

The Life and Health Division is responsible for the review and approval of rate, rule and policy form filings submitted by life and health insurance companies and issuance of licenses for third party administrators.

The Market Examinations Division conducts field examinations of the market practices of domestic and foreign insurers and their representatives.

The Seniors' Health Insurance Information Program's (SHIIP) primary function is to train adult volunteers to help older adults through the maze of Medicare regulations, Medicare supplement insurance, long-term care insurance and claims procedures. In recent years, Medicare's move toward managed care options has led SHIIP to develop new training courses. Recently, there has been an increased interest in long-term care, and the need for information on this product has grown. SHIIP's ability to increase its activities and effectiveness depends on collaboration with numerous state, county, and federal agencies, as well as with community organizations.

The Managed Care and Health Benefits Division (MCHB) monitors and regulates the activities of managed care entities such as health maintenance organizations (HMOs) and managed care indemnity health insurers, including their arrangements with Preferred Provider Organizations (PPOs) and Multiple Employer Welfare Arrangements (MEWAs). The Division's emphasis is on how company activities affect consumers in North Carolina. The MCHB Division accomplishes its work through several types of activities: market practice examinations of companies review of document filings required of companies and data collection, analysis and reporting. The Healthcare Review Program (HCR) offers external review services, which consist of the independent medical review of a health plan denial and offers another option for resolving coverage disputes between a covered person and their insurer.

Property and Casualty Division

This Division licenses rating organizations, advisory organizations and joint underwriting associations, along with reviewing rate, rule and policy form filings made by these entities. In addition, this Division reviews the rates, rules and forms for the North Carolina Rate Bureau, North Carolina Reinsurance Facility, Beach Plan, Fair Plan and licensed property and casualty insurance companies.

State law permits insurance companies that are unlicensed to write insurance on risks in this state as "surplus lines" companies provided there is compliance with applicable statutes and rules. Surplus lines taxes are the responsibility of specially licensed agents. This Division receives and reviews the tax forms submitted by these agents.

	No. of Policies	Premium	Tax generated
2001	56,231	$214,109,734	$10,705,489
2002	49,130	$336,569,618	$16,828,482

Filings Review

Because this Division's primary responsibility is the review of forms, rules and rates, filings must be carefully analyzed. During 2001-2002, a total of 18,143 filings were reviewed.

Forms, Rules and Rates Reviewed

	Companies and Organizations
2001	8,521
2002	9,622
Total	**18,143**

Rate Deviations

Under the jurisdiction of the North Carolina Rate Bureau, state law allows companies to file rate deviations (discounts) on coverages such as private passenger automobile, homeowners, mobile homeowners and dwelling fire. A typical deviation would be lower auto insurance premiums for autos with anti-locking brakes.

New Rate Deviations (Discounts)

	HO	Dwelling/Fire	Auto	Combined Auto/HO
2001	83	6	24	0
2002	139	10	95	0

Workers Compensation

A significant number of large deductible plans and scheduled rating plans have been approved for individual companies as the market continues to remain stable and competitive. This may be attributed to the introduction of loss costs in ratemaking, use of managed care plans, implementation of drug-free workplace plans and increased use of loss control programs. For example, the number of companies filing a drug-free premium credit has increased. Credits start at 5 percent. It applies to North Carolina employers who establish a drug-free workplace, supported by drug testing.

Workers Compensation Loss Costs Filings

	NC Rate Bureau	Residual Market	Individual Company
2001	1	1	136
2002	1	1	114

Workers Compensation Rates 1985-2002

Filing Year	Rate Requested	Rate Implemented	Statewide Premium	Employer Savings
1985	12.90%	7.50%	$289,077,233	$15,610,171
1986	12.80%	5.80%	$363,134,574	$25,419,420
1987	16.80%	15.90%	$419,796,824	$3,778,171
1988	(No Filing)	(No Filing)	(No Filing)	(No Filing)
1989	16.80%	9.00%	$509,210,148	$39,718,392
1990	29.30%	18.90%	$541,485,184	$56,314,459
1991	41.80%	15.80%	$575,129,570	$149,533,688
1992	40.30%	33.00%	$650,405,437	$47,479,597
1993	15.5	9.30%	$865,000,000	$53,630,000
1994	(No Filing)	(No Filing)	(No Filing)	(No Filing)
1995	-15.00%	-15.00%	$603,000,000	$92,259,000
1996	-14.00%	-14.00%	$511,000,000	$70,000,000
1997	-13.70%	-13.70%	$559,055,900	$0
1998	-1.10%	-1.10%	$551,425,191	$0
1999	3.40%	0.00%	$719,538,435	$24,464,307
2000	4.60%	4.60%	$719,538,435	$0
2001	-1.40%	-1.40%	$711,235,000	$0
2002	0.00%	0.00%	$737,133,000	$0

Private Passenger Auto Rates 1984-2002

Rate Effective Date	Rate Requested	Rate Ordered	Consumer Savings
March 1, 1985	4.1%	0.0%	$23,404,824
January 1, 1986	20.8%	10.4%	$69,767,852
July 15, 1987	12.2%	1.0%	$98,010,197
April 1, 1988	4.1%	0.7%	$36,525,296
January 1, 1989	6.4%	4.3%	$23,917,914
March 1, 1990	4.2%	-5.9%	$127,768,278
March 1, 1991	9.6%	4.1%	$77,400,316
June 1, 1992	9.4%	4.4%	$82,868,259
February 1, 1993	-4.2%	-6.0%	$28,537,120
February 1, 1994	(No Filing)	-6.0%	$28,537,120
January 1, 1995	17.7%	-8.5%	$486,800,438
January 1, 1996	13.8%	-8.5%	$412,460,037
December 1, 1996	6.1%	5.5%	$4,257,307
November 1, 1997	5.5%	0.0%	$140,349,969
November 1, 1998	7.2%	0.0%	$195,001,681
November 1, 1999	(No Filing)	0.0%	$195,001,681
September 1, 2000	-5.0%	-9.3%	$124,369,047
April 1, 2002	10.6%	-13.0%	$695,310,174
October 1, 2002	5.9%	-17.8%	N/A
		Total	$2,850,287,510

North Carolina Insurance Underwriting Association (Beach Plan)

Beach Policies Only				
Year	Premiums	% of Change	Policies Issued	% of Change
10/01/00-9/30/01	$25,895,253.00	N/A	27,156	N/A
10/01/01-9/30/02	$27,413,490.00	6%	28,444	5%

Wind and Hail Policies Only (Beach Area)				
Year	Premiums	% of Change	Policies Issued	% of Change
10/01/00-9/30/01	$18,836,985.00	N/A	14,338	N/A
10/01/01-9/30/02	$23,000,641.00	22%	15,550	8%

Wind and Hail Policies Only (Coastal Area)				
Year	Premiums	% of Change	Policies Issued	% of Change
10/01/00-9/30/01	$7,983,602.00	N/A	11,346	N/A
10/01/01-9/30/02	$10,903,841.00	37%	14,090	24%

Total Beach Plan				
Year	Premiums	% of Change	Policies Issued	% of Change
10/01/00-9/30/01	$52,715,840.00	N/A	52,840	N/A
10/01/01-9/30/02	$61,317,972.00	16%	58,084	10%

Other Significant Issues this Biennium

FACTS ABOUT INSURANCE FOR LOSSES DUE TO TERRORISM

Background

- Prior to September 11, 2001 most property and liability insurance policies did not address the issue of terrorism. Many policies did provide exclusions for war, civil war, warlike action by a military force, insurrection, rebellion, revolution, and usurped power. But nothing about terrorism thus the possibility of coverage.
- Immediately following the terrorists' attacks of September 11, most insurance companies filed exclusions to limit their liability from a terrorist event. Some of these exclusions were very definitive as to what constituted terrorism and others were quite broad.

- Because most insurance companies were not willing to insure commercial properties for terrorist events, a movement began to provide some type of federal insurance or reinsurance to provide the coverage. There were concerns that financial institutions would not provide loans to large projects without protection against the possibility of a terrorist event. The lack of coverage could impact our economic growth.
- On November 26, 2002 President Bush signed the Terrorism Risk Insurance Act of 2002 (TRIA). The act provided a federal backstop for certain acts of terrorism through a temporary federal program. Insurance companies will share the terrorism exposure with the federal government. The Secretary of the Treasury in conjunction with the Secretary of State and the Attorney General will certify whether a specific event was an act of terrorism covered under this Act. The act nullified then in-force terrorism exclusions approved by the various states. Companies now must insure against "certified" terrorist events and may offer optional coverage for "non-certified" acts of terrorism.

Coverage and Allowed Exclusions

- In the event of an act of terrorism, the Secretary of Treasury would have to determine if that event met the requirements of TRIA. If so, then the insurance industry and the federal government would share in the losses and individual commercial properties would be protected. The policyholder would receive compensation from the insurance company who would be reimbursed by the federal government.
- In the event of an act of terrorism that was not certified as covered under the federal law, then there would be no absolute coverage. Coverage would hinge upon the insurance contract that might (or might not) exclude terrorism. Property owners would have to rely upon their own policies that may not provide any coverage.
- The TRIA was for commercial property only. In North Carolina, personal lines policies such as homeowners do not have terrorism exclusions. That means if your residence was damaged or destroyed as the result of a terrorist act, your insurance company could not rely upon the fact that it was a terrorist act to deny coverage.
- Workers compensation in most states does not exclude war or terrorism. Workers compensation has the potential to create a catastrophic loss in the event of a terrorist act. Workers compensation is included in the TRIA, so losses may not be excluded.

Medical Malpractice in North Carolina

North Carolina has just been added to the list of states that are experiencing a crisis in medical malpractice insurance. This was indicated in the *News and Observer* in articles published on March 3 and March 4, 2003. There are 17 other states that are on the list developed by the American Medical Association. We are determining the criteria used to declare states in crisis condition.

At this time, the Property and Casualty Division is working with the Actuarial Division to develop our own database on Medical Malpractice premiums. This database should allow us to look at trends in claim costs in North Carolina for leading insurers and look at the overall rate level adequacy in the state; and we hope to encourage the companies to use this database to stabilize rate changes in the state. Also, we are currently surveying other states to compare North Carolina premiums for the same types of doctors and hospitals to the premiums paid in those states. This is to determine where North Carolina stands in the nation. We are undertaking these activities in addition to the handling of rate and form filings that are submitted by the companies.

The DOI's Work on Medical Malpractice in North Carolina

The DOI will review the filings for premiums and policy forms submitted by medical malpractice insurers.

The DOI will prepare a comparison of premiums by doctor class, for over 100 classes (from family practice to ob/gyn's) for the leading insurers. This comparison will provide useful information on premium levels. Comparing the current charts to previous charts makes it possible to compare premiums over time. The comparison will be updated several times a year.

The DOI will create a huge database to study trends in claim costs, and rate level adequacy (whether premiums charged are reasonable, possibly too high, or possibly too low). All leading insurers will contribute. The database will cover doctors as well as hospitals and health care facilities.

The DOI will compare premium charges for doctors and hospitals in North Carolina to other states. This comparison will indicate where North Carolina premiums rank.

Life and Health Division

The 2001-2002 biennium has been a period of steady activity for this Division.

Health Insurance Issues

The Division oversaw health insurers' implementation of the Patient Bill of Rights legislation since numerous new and revised laws required insurers in major medical market to submit revised forms for approval.

An alarming issue North Carolina faces is the decline of competition in the individual major medical market. In 2002, North Carolina had two more insurers pull out of the individual

major medical market – leaving just 16 companies in that market segment, not all of which are actively marketing new business. Individuals that had coverage terminated would be required to qualify for replacement coverage with another insurer and were subject to potential rate increases due to health status.

Life Insurance Issues

New life insurance products continued to be developed during this biennium as this product is increasingly being sold as an investment, rather than strictly as a method of protecting beneficiaries. Life insurance companies are developing policies, which can compete with other investment vehicles, including annuities. The increasing entry of banks into the sale of insurance is fundamentally changing the way in which states and the federal government regulate insurance and banking.

The Division implemented the Viatical Settlements Act which requires licensure of companies who purchase life insurance policies from individuals selling their life insurance.

Form and Rate Filings

Nationally, insurers are calling for state insurance departments to speed up the review process for rates and policy forms, as well as achieve a higher level of uniformity from state to state. These requests are valid with respect to the insurer's need to be able to compete in a national market and in an industry that has changed because of Congress' financial modernization efforts.

The Division has worked steadily to speed up its review process during the 2001-2002 biennium and to make the rules by which products are reviewed more understandable for filers. The Division published a *Filer's Guide* as well as checklists which are found on the Department's Web site. These resources provide a comprehensive overview of the statutes and rules applied by the Division in reviewing the insurance products it regulates.

In addition, during 2002, the Division expanded the use of a national electronic filing system developed by the National Association of Insurance Commissioners (NAIC) known as SERFF. The system enables a filer to electronically submit a product for review at a central site, which transmits it to all states in which it will be sold.

The Division continued to refine its internal database system to enhance the filing process for both external and internal users. The focus for this biennium was to enhance the filing process using existing electronic software programs external users would normally have. The process allows filers to submit forms electronically. Internal users communicate electronically with filers. The end result is an improved speed to market for the industry and a reduction in paper storage needs. Also worth noting is the ability for public viewing of filings via the internet.

The Division reviewed complex form and rate filings during the biennium. New products, many of which contain innovative and complex provisions, were submitted to the Life and Health Division analysts for review. Despite the complexity and volume of filings, the average response time to review a filing was 16 days.

Life and Health Form and Rate Filings

	Forms Filed	Rates Filed	Total Filed
2001	15,304	370	15,674
2002	13,666	752	14,418

Third Party Administrator Licenses

	Issued	Registered
2001	168	55
2002	162	60

Viatical Settlement Providers Licenses

	Issued
2001	0
2002	4

Seniors' Health Insurance Information Program

The Seniors' Health Insurance Information Program (SHIIP), a division of the North Carolina Department of Insurance, provides health insurance information counseling and assistance to Medicare beneficiaries and/or family members in North Carolina. The program is coordinated in each county through an existing human service agency such as a Council on Aging office, a Senior Center, or a Cooperative Extension office. These agencies serve as sponsors and provide important continuity, an available point of access and are models for interagency cooperation. Currently there are 105 SHIIP sponsors in our state. SHIIP was established in 1986 in response to an increased number of calls, letters and complaints from older North Carolinians confused by their health insurance options. Those persons who utilize the program more frequently are typically seniors, disabled individuals and caregivers or adult children.

The activities and duties performed by SHIIP provide a valuable service to the state's senior population. SHIIP's primary objective is to educate the public on seniors' health insurance concentrating on Medicare, Medicare supplements, Medicare+Choice and Long-Term Care insurance. The services offered by SHIIP are accomplished by training volunteer counselors in all 100 counties of North Carolina to educate and counsel their peers on seniors' health

insurance, operation of a statewide toll-free line from the Raleigh SHIIP office and developing educational materials to consumers.

Major Initiatives and Accomplishments

- Currently SHIIP has 983 volunteer counselors and 119 volunteer county coordinators. From January 2001 to December 2002, SHIIP staff trained 334 volunteers in the basic curriculum and certified 180 volunteers as long-term care insurance specialists.
- The SHIIP toll free counseling service answered 46,486 calls from January 2001 through December 2002, averaging 2,000 calls a month.
- SHIIP counselors spent 9,583 hours in volunteer counseling sessions and held 10,962 individual counseling sessions during the period.
- SHIIP staff conducted 415 educational seminars, health fairs and speaking engagements during this period.
- To promote SHIIP's services to the public, 150,038 direct mailers were sent to individuals turning 65 in 2001 – 2002. In addition 13,392 mailings were sent out of the SHIIP office to individuals based on their request for materials. These requests included informational brochures, *Medicare Supplement Comparison Guides* and the NAIC's *Guide to Long-Term Care Insurance Information*.
- SHIIP creates a number of consumer publications on a yearly basis including the *Medicare Supplement Comparison Guide,* the *Guide to Long-Term Care Insurance in North Carolina* and the *Road to Medicare: Planning Your Drive Toward 65*. The Division also serves as a clearinghouse for Centers for Medicare and Medicaid Services (CMS) publications.
- Each year SHIIP staff members appear on "Open Net", the statewide call-in television program produced by the Agency for Public Telecommunications.
- The North Carolina SHIIP was one of the recipients of the CMS Beneficiary Services Certificate of Merit award in July 2000. This award reflected success with the 1999 "Medicare and You" Van Tour.
- In August 2000 SHIIP was named as a mentor SHIIP for the Shipmates program sponsored by CMS and the National Association of State Units on Aging. NC SHIIP worked with the Alabama SHIP during 2001 to help them improve their overall service and effectiveness and to establish a volunteer network.
- SHIIP's www.ncshiip.com was established and existing website made more user friendly for customers.
- In 2001 SHIIP developed an interactive Medicare Supplement insurance premium database on the website. This database provides consumers with up-to-date information about Medicare supplement policy choices, premium costs, rate history and coverage.

- In partnership with the Division of Aging (DOA), SHIIP provided Medicare Lookout training to approximately 500 SHIIP volunteers in 2001 and conducted training in 2002 to professionals in the aging network.
- In 2001-2002 SHIIP began the development of statewide partnership with the public library system. Presently there is a *SHIIP Resource Guide* in 100 libraries in each county seat.
- SHIIP was awarded federal funds to carry out the Medigap Monitoring Demonstration Project in NC in an effort to monitor the quality of information and service being imparted to Medicare beneficiaries in the state by insurance companies.
- In partnership with the DOA and AARP, SHIIP co-produced a brochure on Long-Term care, *It's About You, Your Children, and Your Parents; Planning Today for Tommorrow*.

Major Activities and/or Goals

- SHIIP will make every effort to inform the citizens of North Carolina about the program's services. This includes Medicare beneficiaries, caregivers, adult children of aging parents, aging network professionals, medical providers, etc.
- Efforts will continue to inform the public about long-term care funding and payment options. Employers and baby boomers are among the groups identified as important to reach.
- SHIIP will stand ready to respond to Medicare beneficiaries on Medicare + Choice terminations and provide materials and information if necessary.
- SHIIP plans to continue efforts with regard to the Medicare Lookout Program.
- SHIIP will focus on strategies to reach the Hispanic, African American and disabled populations.
- SHIIP will continue to partner and network with public libraries in the state to include activities such as using the library as counseling sites, training sites and resource material clearinghouses.
- SHIIP will continue efforts to promote computer use and Internet access by seniors.
- Special efforts will be made to respond to persons who have specific needs or concerns; in particular, those who have high prescription drug costs as well as disabilities.

Market Examinations Division

The Market Examinations Division monitors insurance company market practices, especially as they affect consumers. The examination methods employed by the Division are based on a program developed by the National Association of Insurance Commissioners (NAIC). By agreeing to pilot the NAIC program over 25 years ago, North Carolina became the first state in the nation to conduct market examinations along the lines promulgated by the NAIC.

The Division places a priority on automating examination processes. The Division uses audit command language software for 100 percent of the testing on property and casualty examinations. Additionally, this is an ongoing project for life and health examinations. These combined automation efforts result in increased review of company operations, allowing examiners to spend more time on potential problem areas rather than "routine" tasks, and also result in substantial savings to the public since more work can be done in our offices rather than at company offices.

The Division monitors the activities of foreign and domestic insurance carriers operating in North Carolina and is capable of responding to special problems or concerns related to company practices.

Examinations are conducted on a regular rotation so that all companies domiciled in North Carolina and dominant foreign companies are examined on a five-year cycle.

Examinations are divided into three categories: general, compliance and target. The three types of examinations require distinct protocols to ensure that companies are treated fairly and without prejudice or unfair discrimination.

Managed Care and Health Benefits Division

The Managed Care and Health Benefits Division monitors and regulates the activities of managed care entities, including health maintenance organizations (HMOs); preferred provider organization benefit plans (PPOs); managed care indemnity health insurers and multiple employer welfare arrangements (MEWAs). The Division's emphasis is on how company activities affect consumers in North Carolina.

Managed care introduced to the health care delivery system unique company, consumer and provider obligations not inherent in traditional indemnity insurance. In order to deliver the cost controls demanded by purchasers and consumers, managed care organizations apply a broad array of policies and techniques that have tremendous impact on consumers. These include requirements relating to provider networks, as well as programs and policies that insureds and their treating providers must follow as a condition of coverage for services.

The techniques employed by managed care plans to promote quality care and eliminate unnecessary care can also result in the inappropriate denial of coverage for services promised under an insured's policy. Thus, the Department's traditional regulatory oversight of company marketing practices, treatment of policyholders and solvency are expanded to include those systems that are unique to managed care plans.

The Division has played a pivotal role in the development of a comprehensive regulatory framework for managed care plans in North Carolina. In October 1996, regulations were implemented to establish industry standards and departmental oversight of plans' health care provider network arrangements and HMO's Quality Management Programs.

In 1997, the Department developed legislation that strengthened requirements for plans' Utilization Review Programs, established a standardized two-step process under which all health plans must consider plan member appeals and grievances, defined plan requirements for making coverage determinations, strengthened the Department's ability to take action against non-compliant HMOsand greatly expanded the amount and types of information to be provided by health insurers to current and prospective insureds. In 2001, the Division implemented the new prompt claim payment law and, in 2002, played a key role in drafting and subsequently implementing the Managed Care Patients Bill of Rights. Through these and other achievements, North Carolina consumers now enjoy one of the most comprehensive sets of managed care protections to be found in any state, exceeding those proposed in federal managed care reform legislation.

The Division accomplishes its work through several types of activities, including market practice examinations of companies, review of company filings and the collection and analysis of data. These and other activities are discussed below.

The Division's examination program provides for examination of each HMO on at least a triennial basis, and includes review of the non-financial aspects of company operations, including management and control, provider network development and credentialing, utilization management programs, quality management activities, third-party contracting arrangements, marketing, member services and claims payment, and underwriting practices. Examinations last two to eight weeks, depending on their type and areas covered.

General examinations entail comprehensive review of policies, procedures and practices in all operational areas of the company. Compliance examinations are designed to ascertain whether the company has taken corrective action to address problems found during the previous general examination.

The Division is also responsible for reviewing and coordinating filings for HMO certificates of authority and for modifications to HMO licensed service areas and other operational modifications. These reviews are conducted in consultation with others in the Department, including the Life and Health Division, Actuarial Division and Financial Evaluations Division, and include review of applicant companies' planned operations, as well as an on-site pre-licensure examination. When resources permit, a licensure follow-up examination is conducted approximately 12 months after a new HMO has been licensed. The purpose of follow-up examinations is to ensure that actual operations are in accordance with that proposed in the licensure application, as well as to review company policies and procedures relating to areas addressed in law or regulations.

HMO Examinations and Licensure Summary

Year	HMOs	General Exams	Compliance Exams	Pre-Licensure Exams	Follow-up Exams	Target Exams
2001	20	6	1	1	1	1
2002	18	1	1	0	1	0

Beginning in 1999, the Division added PPO benefit plans to the examination program. The examination of PPOs includes review of the managed care aspects of the company's operations, including provider networks, utilization management, member services, claims and marketing. The initial round of PPO examinations are conducted as a learning tool for companies, enabling them to bring their operations into compliance with all applicable laws. In 2001, the Division completed one PPO examination. During 2002, seven PPOs were examined.

In addition to routine market examinations, the division from time to time conducts other reviews of company practices, both to assess compliance as well as to investigate suspected noncompliance. One of these reviews was completed in 2002, to ascertain industry compliance with the new Prompt Pay law that went into effect in July 2001.This resulted in the Division completing reviews of the claims processing activities of 12 HMOs and 11 PPOs.

The review of form health care provider contracts used by HMOs and managed care indemnity health insurers is performed to establish compliance with regulations pertaining to carriers' responsibilities for arranging the provider networks to which insureds are directed and to determine compliance with regulations governing the utilization review process and the member appeal process. The review of annual PPO filings and PPO application filings also permits evaluation of carriers' written policies and procedures regarding provider networks, utilization review programs and member appeals processes.

Managed Care Filings

Year	Provider Form Contracts	PPO Filings
2001	307	39
2002	512	37

In addition to form filings, the Division also receives and handles all complaints against health insurers filed by health care providers. In 2001, 333 complaints were filed with the Division; 520 complaints were filed in 2002, representing a 53 percent increase.

Since 1996, the Division has produced an annual Status Report and Analysis of Activity for HMOs that includes information on plan enrollment trends and plan penetration in the consumer market. The Division expanded the 2000 Report to include data on PPOs and

additional data on HMOs. The Status Report and Analysis of Activity for HMOs and PPOs was published in 2001 and 2002.

Legislation enacted in 1997 enabled the Division to collect data in a uniform format from HMOs and PPOs, providing consistent and comprehensive information to better inform the Department, the industry and consumers on the practices of these benefit plans. Beginning in 1999, HMO and PPO carriers must report on March 1 of each year summary information on:

- grievances and noncertification appeals
- changes in enrollment
- provider turnover
- provider availability and accessibility
- utilization and utilization review activity
- provider compensation methods
- costs
- HEDIS® outcomes measures

In order to make this information available in a user-friendly way to the public, the Division began publishing an annual consumer guide to managed care. In 1999, the Division published two consumer guides to managed care, one incorporated the non-HEDIS data along with general information on managed care, and the second guide contained the HEDIS® data, which is not available until later in the year. In 2000, the two guides were combined into one, with additional performance data included. The Division continued to publish updated consumer guides in 2001 and 2002.

Since laws were enacted to license multiple employer welfare arrangements (MEWAs), 11 licenses have been issued. The Division reviews MEWA initial and annual license applications, coordinating their approval with other divisions, similar to the coordinated review of HMO certificates of authority.

MEWAs Licensed

Year	Licensed	Terminated
1993	3	
1994	2	
1995	0	
1996	1	
1997	0	
1998	1	1
1999	1	3
2000	2	
2001	0	
2002	1	1
Total	Licensed - 7	

Healthcare Review Program

External review is the independent medical review of a health plan denial and offers another option for resolving coverage disputes between a covered person and his or her insurer. In North Carolina, external review is available to covered persons when their insurer denies coverage for services on the grounds that they are not medically necessary. This type of denial is referred to as a "noncertification decision." Denials for cosmetic or experimental services may be eligible for external review, depending on the specific circumstances of a case. The law applies to persons covered under fully insured health benefit plans, the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan and the Health Insurance Program for Children (CHIP).

To be accepted for external review, a covered person must meet eligibility requirements. A request is made directly to the HCR Program, where program staff is required to review each request for completeness and eligibility. In order to do this, information is received from the insurer within statutorily required time frames and, if needed, additional information is requested from the covered person. Once accepted for external review, the case is assigned to an independent review organization (IRO) for clinical review. The IRO issues a determination within the statutorily required time frame for the specific request (within 45 days of the HCR Program's receipt of a request for a standard review and four days for an expedited review). The Program monitors compliance with the statutory and contractual requirements of the parties involved in external review.

Additionally, the HCR Program provides consumer counseling with respect to utilization review and insurers' internal appeal and grievance processes.

HCR Program Development Activities

- Law requires that the program contract with qualified independent review organizations to provide the clinical review of each case. The program is currently contracted with five IROs, having completed the RFP and selection process as required under NCGS 58-50-85.

- Data tracking systems have been developed within an existing Department program to assure that HCR would capture all external review activity for analysis and reporting requirements.

- Consumer information has been developed and made available to the public through the Department's Web site. A request form, instructions for completing a request form, FAQs and a brochure entitled "A Consumer's Guide to External Review" are available for consumers on the Web site.

- Information and education regarding external review has been made available for the insurance industry. HCR staff meets with insurers to educate them regarding their requirements relating to external review.

- The Program has contracted with two medical professionals to fulfill the statutory obligation under NCGS 58-50-82, for medical advice relating to the handling of a request for an expedited external review.

External Review Activity

During the first six months of this year, the HCR Program received 59 requests for external review. Nineteen cases were eligible and accepted for review, with 16 cases having an outcome as of Dec. 31, 2002. Two of these cases were reversed by the insurer prior to being assigned to an IRO, seven cases had the insurer's decision upheld by the IRO and seven cases were overturned. Overall, the majority of cases for the first six months of operations (56 percent) were resolved in favor of the consumer.

Consumer Counseling Activity

Since assuming the responsibility for counseling consumers regarding utilization review and the internal appeals and grievance processes offered by insurers, HCR Program staff has provided counseling on 148 cases.

Program Activity Measures

Activity Measure	**July 1 – December 31, 2002**
External Review	
Number Received & Evaluated for Eligibility	59
Number Accepted for External Review	19
Number of Accepted Cases Closed	16
Consumer Counseling	
Number of Cases	148
Consumer Calls	
Total Calls Answered (External Review and Consumer Counseling)	593

Public Services Group

The Public Services Group is comprised of the Agent Services, Consumer Services and the Investigations Division.

The Agent Services Division regulates all licensed agents, brokers, limited representatives, appraisers, adjusters, premium finance companies, collection agencies, motor clubs, bail bondsmen, surety agents and bail bond runners authorized to do business in North Carolina. This includes pre-licensing education, continuing education, agency examinations and administrative actions.

The Consumer Services Division assists North Carolina consumers by answering insurance questions and resolving their insurance problems. A staff of consumer specialists advises and acquaints consumers with courses of action they may pursue to resolve their particular insurance problem.

The Investigations Division conducts criminal investigations of insurance-related crimes committed by policyholders, claimants, insurance producers and insurance companies. The division also conducts criminal investigations of bail bonds, collection agency and premium finance industries.

Consumer Services Division

The technical and complex nature of insurance generates a multitude of questions from the consuming public and from many segments of the insurance industry itself. The Department's Consumer Services Division handles questions touching upon all types of insurance products. Each year this Division provides valuable assistance to a broad array of our citizens.

During the 2001-2002 biennium, Division staff handled just under 100,700 consumer calls in 2001 and over 105,000 in 2002. Each year the staff processed more than 10,000 written consumer complaints. A computerized data format allows for continuous updates and changes on each complaint file.

Such computerized complaint handling and the accumulation of related information offers important indications of how well departmental regulatory measures are affecting insurance market practices.

During the 2001-2002 biennium, the Consumer Services staff was involved and active in a number of areas.

During 2002, the Consumer Services Division was able to assist the citizens of North Carolina by recouping some $10,584,541.56 for claims/underwriting concerns. This

number reflects an increase of approximately 19.2 percent over the 2001 number. Assistance for the years, 2001, and 2002 is referenced below:

2001	2002
$8,882,132.70	$10,584,541.56

The division experienced an increase in the number of inquiries (5 percent) and the number of complaints (15 percent). Additionally, inquiries/complaints received via the Web site increased by 52 percent. Walk-in traffic for the division increased 11 percent. Numbers in this category are referenced below:

	2001	2002
Inquiries:	**100,633**	**105,350**
Life & Health	49,051	51,177
Property & Casualty	51,582	54,173
Complaints:	**10,286**	**11,778**
Life & Health	6,082	6,022
Property & Casualty	4,204	5,756

	2001	2002
Internet:	**2,670**	**4,047**
Life & Health	1,227	1,733
Property & Casualty	1,443	2,314
Receptionist/Switchboard:	**77,998**	**74,254**
Walk-in Visitors	238	264
Calls through the Switchboard	77,760	73,990

The breakdown of the complaints is as follows:

Life & Health:	2001	2002
Life & Annuity	20%	23%
Accident & Health	80%	77%
HMOs*	15%	9%

Property and Casualty:	2001	2002
Automobile	66%	62%
Homeowner	14%	15%
Other	20%	23%

**Percentages for HMOs are a subset of the Accident and Health percentages.*

The division mailed 11,015 publications during the 2002 calendar year. The top four publications mailed were:

It Pays to be a Safe Driver	5,023
Consumer's Guide to Health Insurance	1,079
Consumer's Guide to Auto Insurance	733
State Continuation	274

In 2001-2002, the Division's "Consumer" portion of the department's Web site continued to be significantly enhanced with the addition of new and existing brochures, complaint ratios and an automobile rating mechanism. The addition of an interactive online complaint form and an e-mail address for inquiries has provided consumers with instant access to the Consumer Services Division.

The Division serves as a significant front line service organization. Consumer Services staff continually strive to improve the quality of their service to consumers through professional training and continuing education. Additionally, the "hotline" section was recently reorganized to enable specialization between the Property and Casualty and the Life and Health lines of insurance. As such, the staff can field more complex inquiries in their lines of expertise and provide answers thereto with as much detail as is needed to properly answer consumer questions.

Agent Services Division

The Agent Services Division regulates all licensed agents, brokers, limited representatives, appraisers, adjusters, premium finance companies, collection agencies, motor clubs, bail bondsmen, surety agents and bail bond runners authorized to do business in North Carolina. This includes pre-licensing education, continuing education, agency examinations and administrative actions.

The division ended the 2001 calendar year with a restructuring due to the 2001 merger with the Special Services Division. The rationale for this merger was to separate the

regulatory function from licensee matters involving criminal conduct and requiring investigation by Sworn Law Enforcement Officers. All Law Enforcement Officers were transferred to the Investigations Division.

The division revamped procedures associated with unpaid surety judgements effective July 1, 2002. A decrease from the 2001 numbers was noted in liquidation activities associated with professional bail bondsmen and surety companies.

Securities Liquidated:	**2001**	**2002**
Professional	$316,109.64	$187,254.22
Surety	$2,953,039.52	$2,104,305.05

The division has automated all files and licensure information associated with motor clubs. Automation relative to premium finance companies was also accomplished in 2002.

	2001	**2002**
Licensing:		
Appointments	171,383	166,993
Terminations	106,539	128,191
Lifetime Licenses	24,751	26,576
Limited Representatives	4,953	3,767
Brokers	449	438
Adjuster/Appraiser	4,154	4,246
Professional Bail Bondsmen	217	188
Bail Bond Runners	321	280
Surety Agents	692	775
Surplus Lines/Purchasing Groups	52	84
Corporations/Partnerships	925	968
Motor Clubs (B/O)	490	445
Collection Agencies	454	569
Premium Finance Companies	226	244
Continuing Education:		
CE Courses Approved	997	1,028
Financial:		
Insurance Related Revenues		$23,066,804.25

Non-insurance Revenues		$556,744.00
Regulatory:		
CE Courses Monitored	175	83
Agency Examinations	174	202

	2001	2002
Complaints:		
Insurance Related	159	179
Non-Insurance	226	221
Conferences	82	84
Licenses Denied	75	91
Licenses Revoked	10	0
Licenses Suspended	7	9
Licenses Surrendered	43	27
Licenses (non-renewed)	0	90
Administrative Hearings	12	10
Monetary Penalties	$7,000.00	$11,000.00
Notices of Deficiencies	4	22

The mandatory requirement for electronic agent appointments and terminations was implemented in 2002.

The division handled 53,527 calls in 2002 (an increase of 28.9% over the 2001 number of 41,534).

On an annual basis the Division hosts state licensing examination item-writing sessions for property/casualty and life/health. The purpose of the item-writing sessions is to keep state licensing examination questions current. The course catalog is available on the Division's Web site, www.ncdoi.com, as is the Department Newsletter, which is published twice a year.

Investigations Division

The Investigations Division conducts criminal investigations of insurance-related crimes committed by policyholders, claimants, insurance producers and insurance companies. The division also conducts criminal investigations of bail bonding, motor club, collection agency and premium finance industries.

During 2001-2002, case referrals and allegations of fraud submitted for investigation by this Division have remained at a consistently high level. This, of course, is reflective of the problem of insurance fraud itself as well as indicative of the steady increase of fraud awareness on the part of both the consumer and the industry. In addition, over the last two years, the Division has made a concerted effort to continually assure that quality investigations are being pursued so that the North Carolina consumer is most effectively served. This commitment to quality has resulted not only in impressive statistical achievement, but, also, in a more efficient and effective operation.

	2001	2001
Incoming Referrals:		
Industry	377	361
NICB	543	612
Government Agencies	12	21
Citizen Complaints	169	164
Law Enforcement	17	23
DOI Divisions	37	73
Outgoing Referrals:		
Law Enforcement	2	5
Administrative Agencies	42	71
DOI Divisions	57	99
Investigations Assigned:	151	317
Investigations Closed:	53	131
Active Investigations:	275	378

Thirty-five convictions were achieved in 2002 (an increase of 29.6 percent over the 2001 numbers). The 35 convictions are the most ever for the division. Cases worked involved Professional Employer Organizations (PEOs), unauthorized insurance, chiropractor fraud, viatical fraud, staged accidents, embezzlement and fraud associated with insurance activity (FEMA and claim adjudication), and certain bail bonding related matters.

Successful case resolutions increased 18.8 percent during 2002 to a total of 86. The dollar amounts associated with these successful resolutions were less in 2002 as numbers relative to the 2001 cases referenced the viatical fraud initiatives that resulted in extremely significant fines, savings, and recoveries. Numbers for 2001 and 2002 are listed below:

	2001	**2002**
Successful Case Resolutions	**(73) $25,724,367.47**	**(86) $5,584,046.79**
Convictions	(27) $12,691.855.73	(35) $3,416,635.09
Monetary Recoveries	(46) $13,032,511.74	(51) $2,167,411.70

A grant in the amount of $75,000 was awarded to the division from the Governor's Crime Commission. The division utilized these funds to purchase the Aithent Case Management System/Database.

The division head and others within the division, working within the NAIC Antifraud Working Group, contributed significantly to the development of a Uniform Insurance Crime Reporting form. Once adopted by the NAIC, the form will be placed on the Web-sites of every state DOI so that the industry can report fraud uniformly across the country. Additionally, the division head was responsible for training activity associated with regulators and the industry, both in North Carolina and elsewhere. Fraud Director's roundtables, viatical fraud, PEO fraud, unauthorized entities, agent embezzlement, and other topics have been taught by the division head and certain investigators at NAIC, North Carolina Association of Special Investigators, and North Carolina Insurance Crime Information Exchange sponsored training.

Insurance fraud related cases have been and are being addressed in the areas of health care, workers' compensation, unauthorized insurers, Multiple Employers Welfare Arrangements, employee leasing companies, surety bonds, and the traditional claimant and agent fraud covering all lines of insurance.

The Division remains a vital entity of the North Carolina Department of Insurance, often assisting other internal regulatory divisions in the identification of subjects, schemes, and entities requiring attention. Investigators regularly testify at departmental hearings and assist in the preparation of new or amended anti-fraud legislation.

Personnel of this Division are active and respected members of industry anti-fraud organizations, law enforcement related organizations, and task forces throughout the state. Memberships include the North Carolina Insurance and Health Care Fraud Task Force, the North Carolina Insurance Crime Information Exchange, North Carolina Police Executives Association, the National Association of Insurance Commissioners Anti-Fraud Task Force, the International Association of Special Investigations Units, and the North Carolina Sheriff's Association. Division personnel regularly receive insurance and law enforcement related training and often are called upon to represent the Department by giving presentations and training to various groups in North Carolina and across the nation.

The Investigations Division stands ready to meet the many challenges that the future holds. As the very infrastructure of insurance methods and operations radically change, so will the methods and operations of the insurance fraudster. Internet based insurance transactions and electronic licensing/appointing functions unveil an entire universe of illicit opportunities to those intent on cheating the system. Banks and other financial institutions are entering the insurance market and insurance companies are diversifying as well. This will broaden the scope of potential fraud into a multitude of areas and will require a coordinated

and uniform response from regulators, law enforcement, and the industry. The Investigations Division is committed to meeting these challenges now and in the future.

Legislative Action

The passing of the Producer Licensing Model Act and subsequent revisions to the Act by the NAIC required the division to create a personal lines license. Industry requested this license, as some of the company producers never sold commercial lines of insurance and had no need for a Property and Casualty license.

Office of the General Counsel

This organizational unit provides internal legal advice to all divisions of the Department. The Department's General Counsel also acts as liaison with the Attorney General. The office coordinates hearings on a wide variety of administrative matters and prepares complex orders and memoranda for the Commissioner. The General Counsel serves as the Department's primary hearing officer having final agency decision authority, and reviews all Department contracts with suppliers and consultants.

General Counsel

The General Counsel gives legal direction and counsel to the Commissioner and all members of the Department in areas of law relating to the entities regulated by the Department, which include: the insurance industry, the bailbond industry, collection agencies, premium finance companies and building inspectors. The General Counsel also provides advice to the Department on a wide variety of procedural matters, including the Administrative Procedures Act and Rules of Civil Procedure. Additionally, the General Counsel provides legal advice pertinent to the running of the Department itself, such as advice on personnel matters, and the public records law.

Between January 1999 and December 2000, the General Counsel's office responded to 579 legal service requests from Department personnel without the involvement of the Attorney General's office. Further, the General Counsel serves as the Department's primary hearing officer for a wide variety of administrative hearings under Article 3A of Chapter 150 B of the North Carolina General Statutes. During the 1999-2000 Biennium the General Counsel's office has been involved in over 119 administrative hearings.

The General Counsel evaluates the effectiveness of the work of the Attorney General in the context of providing advisory opinions and handling administrative proceedings and other litigation. The General Counsel also litigates cases at the instruction of the Commissioner of Insurance when the Department of Justice has conflicts with representing the Department of Insurance.

Ratemaking Litigation

During the 1999-2000 Biennium, Rate Counsel continued to be closely involved in several pieces of significant litigation involving ratemaking for lines of insurance under the jurisdiction of the North Carolina Rate Bureau ("Rate Bureau"). In March 2000, all pending litigation was finally settled.

1. 1994 Auto Rate Case

In September 1994, the Commissioner disapproved an auto insurance filing submitted by the Rate Bureau on Feb. 1, 1994. The Commissioner's 1994 order was subsequently

appealed to the North Carolina Court of Appeals, which rendered its decision in the matter in December 1996, affirming in part, reversing in part and remanding the case to the Commissioner for a recalculation of the profit provisions and for a clarification on the issues of dividends and deviations and expense trends.

The Commissioner issued a Remand Order on Sept. 10, 1997, which further decreased the overall rates established by the Commissioner in the original Order and further ordered that the escrow amounts be increased pending appeal of the case. The Remand Order was also appealed to the Court of Appeals and a decision was rendered on Dec. 29, 1998, affirming the Commissioner's clarification of dividends and deviations and expense trends and remanding the case to the Commissioner for a recalculation of the profit provisions.

In January 1999, Rate Counsel petitioned the North Carolina Supreme Court for a review of the Court of Appeals' decision to remand the 1994 case to the Commissioner for a recalculation of the profit provision. The Rate Bureau likewise petitioned the Supreme Court for a review of the Court of Appeals' decision on the dividends and deviations issue in this same case. The Supreme Court accepted the case for the limited purpose of asking the Court of Appeals to review its decision to ensure that it complied with the Supreme Court's June 2000 decision in the 1996 rate case. The Court of Appeals subsequently affirmed its prior decision and in October 1999, the Rate Bureau petitioned the Supreme Court for further review. Rate Counsel opposed the Rate Bureau's second petition to the Supreme Court and the Supreme Court's decision on this second petition was pending at the time this case was settled in March 2000.

2. 1996 Auto Rate Case

In April 1996, the Rate Bureau submitted an auto filing which satisfied the 1995 and 1996 filing requirements. The Department held a six-week hearing and the Commissioner issued his final Order in October 1996 disapproving the filing.

The Rate Bureau appealed the Commissioner's order to the Court of Appeals, which rendered its decision on June 16, 1998 affirming in part, reversing in part and remanding the case to the Commissioner for recalculation of the profit provisions. The Court of Appeals' decision contained a dissent by Judge Greene, which allowed the Commissioner to appeal the profit issue to the Supreme Court as a matter of right. In addition, the Rate Bureau petitioned the Supreme Court for discretionary review of the issue of dividends and deviations; the Rate Bureau's petition was allowed on Nov. 5, 1998.

In February 1999, Rate Counsel filed two extensive briefs with the Supreme Court on the issues of profit calculation and dividends and deviations. In March 1999, Rate Counsel presented its oral argument to the Supreme Court on the pending issues. In June 1999, the Supreme Court rendered its decision affirming the Commissioner on the issue of dividends and deviations but remanding the case to the Commissioner for a recalculation of profit. The litigation of this case was pending at the time this case was settled in March 2000.

3. 1999 Auto Rate Case

In March 1999, the Rate Bureau filed for an approximate 5 percent decrease in auto rates. In August 1999, as a result of the Supreme Court's June decision on the issues of profit and dividends and deviations, the Bureau amended its filing in order to comply with the Supreme Courts's decision, but still seeking an approximate 5 percent reduction in rates. Despite the request for a decrease, the Commissioner called for a rate hearing because the Rate Bureau's methodologies were flawed and the reduction in rates should have been substantially larger. The hearing on the 1999 auto filing commenced in November 1999 and did not conclude until January 2000.

In March 2000, prior to issuance of the Commissioner's Order on the 1999 auto case, the Commissioner and the Rate Bureau settled all litigation on the 1994, 1996 and 1999 auto cases. The settlement resulted in a refund to consumers of $250 million plus approximately four years of interest at 11.5 percent per annum. The settlement also resulted in an overall reduction of auto rates of 9.25 percent through Oct. 1, 2001 (thereby effectively settling the 2000 auto rate filing, as well).

4. 1999 and 2000 Workers' Compensation Loss Cost Cases

In addition, the Commissioner settled the 1999 and 2000 Workers' Compensation cases without the necessity of a formal hearing. The 1999 case was settled for a 0 percent change in rates and the 2000 case was approved for a 4.6 percent increase in rates.

Office of State Fire Marshal

The Commissioner of Insurance has served by North Carolina General Statute since the late 1940s as the State Fire Marshal. Groundwork for this began in 1907 when the General Assembly established the "Firemen's Relief Fund," requiring the Commissioner to collect funds from insurance companies to be used for relief of distressed firefighters.

In an effort to bring more focus and visibility to this division's programs, the Office of State Fire Marshal (OSFM) was formally established within the Department of Insurance on April 1, 1998, thus replacing the former Safety Services Group. The creation of OSFM primarily involved a name change, but there continues to be some reorganization and combining of resources as the new office evolves.

OSFM is comprised of the following six divisions: Engineering and codes, Manufactured Building, Risk Management, Fire and Rescue Training and Inspections, Fire and Rescue Commission and Programs, Prevention and Grants.

OFSM administers and enforces life safety standards throughout the state, promotes risk management practices throughout government and maintains a sound insurance program for state agencies.

The Engineering Division is comprised of seven sections: code consultant, state property plan review, mechanical, home inspection, inspector certification, building code council and handicapped accessibility. This division administers the state building code and provides staff to the North Carolina Building Code Council, the North Carolina Code Official Qualifications Board and the Home Inspectors Licensing Board.

The Manufactured Building Division works to assure that construction standards for manufactured homes are maintained and that warranty obligations under state law are met. The division monitors handling of consumer complaints, licenses the makers of manufactured homes, dealers, sales representatives and set-up contractors and acts as staff for the North Carolina Manufactured Housing Board.

The Risk Management Division administers the self-insurance funds for state-owned property and vehicles, and procures from private insurance companies other types of insurance needed by the state agencies and universities. This division inspects all state-owned facilities for fire and life safety and inspects all new state-owned facilities for Electrical Code compliance. Also, the division assists local governments with property and casualty insurance programs and makes available professional liability coverages for law enforcement officers, public officials and employees of any political subdivision in the State.

This division also provides staff, administration, and research services to the Public Officers and Employees Liability Insurance Commission (POELIC).

The Fire and Rescue Commission Division serves as staff to the Fire and Rescue Commission and handles the state's voluntary certification system comprised of 16 levels and 40,000 individuals, as well as the State Fire and Rescue Incident Reporting System.

The Program Development, Prevention, and Grants Division administers the Firemen's Relief Fund, Rescue Relief Fund, assists all divisions within the OSFM with development of programs and brochures and provides direction and support for injury prevention programs statewide. The division also administers matching dollar-for-dollar grants to volunteer fire departments and rescue squads and offers fire prevention education in the public schools.

The Fire and Rescue Training and Inspection Division trains fire departments, rescue squads, and instructors to improve fire and rescue protection statewide. Through special schools, development of training programs and teaching outlines, and specialist training directed to instructors, this division provides continuous upgrade to the training of our states emergency workers. Fire department's delivery capabilities are measured and upgraded by providing initial insurance ratings for fire departments, as well as coordination for the improvement of ratings to reduce insurance costs for homeowners.

Engineering Division

North Carolina's General Statutes give the Commissioner of Insurance the responsibility of general supervision of the administration of the North Carolina State Building Codes. The codes contain regulations relating to plumbing, electrical, heating, air conditioning and fire protection systems and the construction of buildings in general. The Division meets these responsibilities by providing interpretations of code requirements and assisting local government authorities with the application of the codes. It should be noted that the building codes are developed by the North Carolina Building Code Council, not the DOI.

The Division reviews plans and specifications of new buildings for code compliance, assists with code-related educational programs and administers state examinations required for certification of city, county and state code enforcement officials.

Division staff also administers the state's accreditation program of independent inspection agencies that safety test and label electrical and mechanical equipment.

In addition to serving as an informal state code appeals agency, the Division also serves as staff to the North Carolina State Building Code Council, the North Carolina Code Officials Qualification Board and the North Carolina Home Inspectors Licensure Board.

Code Administration and Enforcement

The Division provides interpretations of the intent of the state building code to city and county inspection officials, architects, engineers, contractors, material suppliers, manufacturers, other state agencies, attorneys and the general public.

The Division is responsible for reviewing plans and specifications for large buildings. Before a permit can be secured for these buildings, a letter of compliance must be issued by this Division to the inspection department having jurisdiction.

State law requires that handicapped and disabled persons receive treatment equal to that afforded other persons. The Division has an Accessibility Section, which provides information to handicapped organizations, design and construction professionals and building owners in the application of these state laws and the building code requirements relating to accessibility. This assistance helps provide our disabled citizens with the full and free use of all buildings in the state. Accessibility regulations are currently being revised to make North Carolina Code equivalent to federal Americans with Disabilities Act regulations.

Because some buildings require special construction, technical assistance is necessary from the Division to ensure that the building is safe. Inspection assistance is also provided for structures when deterioration, fire or storms create conditions, which appear to be hazardous to life.

Engineering Division Activities

	2001	2002
Plans reviewed	2,618	2,347
Office conferences	3,639	4,712
Telephone information requests	54,509	61,458
Schools, seminars and conference participation	930	1,020
Building Code Council meetings	31	44
Qualification Board Meetings	22	25
Qualification Board complaint investigations	17	9
Inspection certification schools coordinated	199	254
Inspection certification exams administered	1,884	1,332
Inspection certification applications reviewed	4,923	4,379
Inspection certification renewed and issued	5,832	5,475
Code publication sales	$771,437.00	$1,280,296.00
Home Inspector Board meetings/hearings	27	42
Home Inspector exams administered	343	436
Home Inspector applications reviewed	239	285
Home Inspector licenses issued/renewed	1,142	1,173
Home Inspector Complaint Investigations	31	28

Division staff also serves as the State Damage Assessment Team and assists the State Office of Emergency Management during disasters.

State Building Code Council Support

The Building Code Council consists of 17 members appointed by the governor. The Council is empowered to adopt and amend the state building code, hear appeals on the interpretation of the code and approve local building regulations which are different from the state code. The Council holds regularly scheduled public hearings on the second Tuesday in March and September. Additional meetings are held by Council code committees.

State law permits the Building Code Council to provide, in circumstances deemed appropriate, programs to certify independent testing laboratories as state-accredited third-party agencies to evaluate, inspect and label factory-built manufactured buildings, and electrical and mechanical building components. Division staff administers this program.

Code Officials Qualification Board Support

This Board develops standards for the training and certification of code enforcement officials. The Division provides clerical and staff services in support of this effort. The Board is also responsible for developing training schools and state examinations for inspector certification. Some Division staff members serve as instructors; all state certification exams are administered by Division staff.

Persons certified by the Board are issued a certificate for each level and area of inspection for which they have met qualification requirements. The Division also investigates written, substantiated complaints against inspectors made to the Board, which may then schedule a hearing.

Home Inspectors Licensure Board Support

This Board was created by the General Assembly in 1994 to provide for the licensure and regulation of those who perform home inspections for compensation. This Board is composed of seven members and a designee of the Commissioner of Insurance. This Board provides for the development and maintenance of standards of practice, code of ethics, examinations, licensure, renewal and disciplinary procedures for home inspectors in North Carolina. The Division provides clerical and staff services in support of this effort. The staff provides all administrative functions for the Board including administering the examinations, issuing licenses, renewal of licenses and investigation of complaints.

Manufactured Building Division

This Division acts both as a state administrative agency under the federal Manufactured Housing Constructions and Safety Standards Act and as staff to the North Carolina Manufactured Housing Board.

The role of a state administrative agency is to monitor manufacturers' handling of consumer complaints to assure compliance with federal standards. Staff support of the Manufactured Housing Board includes receiving and resolving consumer complaints and licensing all manufacturers, dealers, set-up contractors and salespersons that do business in this state to ensure compliance with warranty requirements set forth in the General Statutes.

The Division is responsible for filing claims against surety bonds in the event dealers, manufacturers or set-up contractors go out of business or cannot otherwise fulfill their warranty obligations.

Manufactured Building is also responsible for developing set-up and anchoring standards for manufactured homes and assisting local inspection departments in the inspection of homes for proper set-up and anchoring requirements. Training seminars are held throughout the state each year to familiarize the local inspection departments, manufacturers, dealers, set-up contractors and other interested parties with the manufactured housing standards and any recent revisions to those standards.

This Division is entirely receipt supported. A portion of these receipts come from fees received from HUD for manufactured homes placed in our state for retail sale. The Division receives additional funds from licensing fees charged to manufacturers, dealers, set-up contractors and salespersons.

The Division also supplements its receipts by participating in a monitoring contract with the National Conference of States on Building Codes Standards. During 2001-2002, Division staff spent approximately 2,240 hours in interstate monitoring inspections of manufacturing plant facilities.

The Manufactured Building Division also serves as staff to the North Carolina Building Code Council in the administration of the state's modular construction program. This includes receiving and resolving modular complaints and the certification and monitoring of residential and commercial modular manufacturers. Currently there are 124 certified manufacturers shipping modular buildings into North Carolina, with plant locations ranging from Florida to Texas to Quebec. The Division also certifies independent certification agencies (third party agencies) that review modular plans for compliance with the North Carolina State Building Code and monitors production in modular plants on continuing basis.

Manufactured Building Division Activities

	2001	2002
Complaints Received	880	658
Inspections Completed	556	336
Manufacturers Licensed	83	77
Dealers Licensed	875	780
Set-up Contractors Licensed	587	535
Salespersons Licensed	2,876	2,336
Salespersons Temp. Licensed	1,206	966
Board Hearings Scheduled	36	17
Pre-Hearing Conferences Scheduled	161	99

Manufactured Building Division Activities - Modular Construction

	2001	2002
Complaints	84	46
Manufacturers	122	124
Third Party Certification Agencies	9	9
Modular Stamps	6396	6312

Risk Management Division

This division is responsible for the operation and maintenance of the State Property Fire Insurance Fund, the self-insurance plan for the State's property. The division currently has jurisdiction over approximately 14,000 state-owned buildings with a combined value of $11.7 billion. Losses to the State's property are investigated and adjusted by this division and are paid from the Fund with the approval of the Council of State. A total of 48 claims were paid from the Fund in 2002, totaling $578,725.

The Fund provides basic fire and lightning insurance coverage for state-owned property and offers insurance for wind, hail, riot, explosion, smoke, theft, sprinkler leakage, vandalism, flood, business interruption and "all risk." All General Fund facilities are insured for fire and lightning at no cost to the agency. Approximately 75 percent of the State's buildings receive this coverage free. Special Fund facilities are billed for this coverage at approximately one-half of the manual rate. This arrangement has saved the State millions of dollars, compared to buying commercial insurance. When the Fund was established in 1945, the General Assembly recognized that loss prevention was an essential ingredient for a successful self-insurance program. Statutes require an annual fire and life safety inspection of all State-owned buildings by inspectors who are certified in the interpretation of codes and standards for fire protection and construction. Reports are made to agency managers

for correction of deficiencies. The inspection staff also provides advice on corrective measures.

This division also inspects all new electrical systems in state-owned buildings to assure that these systems comply with the State Electrical Code. Also, technical expertise and Electrical Code consultation is provided to local electrical inspectors, design engineers, contractors and the general public. This division administers a third party accreditation program for school electrician certification and coordinates planning and presentation of educational programs on the State Electrical Code.

The Risk Management Division serves as a resource for state agencies in resolving risk issues. This division administers the State's automobile insurance program, which covers 37,836 vehicles. Also, various types of insurance coverages are procured for state agencies from private insurance companies. These coverages include, but are not limited to, inland marine, ocean marine, aircraft liability and physical damage, boiler and machinery, workers compensation, accident and health, general liability, crime, professional liability and bonds. This division assists local governments with their property and casualty insurance programs. Since 1986, 167 North Carolina communities and counties have received insurance surveys and risk management services.

The Division also provides staff, administration and research services to the Public Officers and Employees Liability Insurance Commission. The Commission is charged with making available a plan of professional liability coverages for all law enforcement officers, public officials and employees of any political subdivision of the state. The Commission also provides $11,000,000 in liability coverage on all state employees for losses resulting in bodily injury or property damage and for errors and omissions in the performance of their jobs. 75 Claims were fund.

Fire and Rescue Commission

The Fire and Rescue Commission is an advisory board consisting of representatives from various fire and rescue organizations as well as state agencies. The Commission is responsible for developing voluntary certification programs and professional standards for all levels of fire and rescue personnel.

Presently, eight certification programs and 20 levels of certification are active, including: Firefighter, Instructor, Rescue Technician, Fire and Life Safety Educator, Fire Apparatus Driver/Operator, Emergency Vehicle Driver, Hazardous Materials Responder, Fire/Arson Investigator and Fire Officer I.

The Firefighter, Instructor, Hazardous Materials and the Driver/Operator programs are currently accredited by the International Fire Service Accreditation Congress, of which the Commission is an active member.

Each month the Commission receives approximately 300 applications for one of the above mentioned certifications, along with approximately 300 re-certification requests. In 2001-2002, the Commission certified or re-certified 1700 individuals to the level of fire fighter I and 1611 to the level of fire fighter II. Presently a firefighter must re-certify ever five years. The Commission records currently maintain over 60,000 certifications.

An ongoing project of the Commission is development and dissemination of the Occupational Safety and Health Standard for Fire Departments and Rescue Squads. This was a compilation of the applicable NFPA Standards and OSHA General Industry Standards.

Future programs for the Commission will include the Unified Command and Control and the Line-of-Duty-Death programs. Pilot testing of these courses will begin in early 2003.

The goal of such programs is that they will provide additional professional recognition, as well as enhance the safety of emergency services personnel in North Carolina.

Fire and Rescue Training and Inspection Division

This division serves as the certifying agency for qualifying fire departments and their members for several benefit programs.

The primary responsibility of this group is the delivery of instructor upgrade and qualification courses. However, additional requirements extend to direct program deliveries, program development and participation on the State Emergency Response Team.

During the biennium efforts were made to provide the best possible service for the Fire and Rescue Services in North Carolina. A constant review and update of all existing instructional programs is essential in providing the most current information and techniques. Training delivery continued with an emphasis on instructor upgrade and qualification but has also provided for special school direct deliveries.

This section has participated in programs provided by the National Fire Academy and the Emergency Management Institute both on a federal and regional level. Personnel attended classes as well as received the train-the-trainer programs to be delivered to in-state instructors and responders. OSFM personnel have been appointed to and are currently serving on national committees with the responsibility of creating training standards and curriculum with organizations including the National Fire Protection Agency (NFPA), FARMEDIC and the Terrorism Task Force.

This section also continues to attend in-state meetings and conventions and to serve on committees where requested. Some of the events which have been attended by our personnel include: the North Carolina State Firemen's Association and North Carolina Association of Fire Chief's annual conference, winter meeting of the Fire Chief's Association, the North Carolina Association of Rescue and EMS annual conference, EMS Today, the North Carolina Association of County Commissioners, the North Carolina Fire College and many others.

Rating Classification

Rural Fire Districts		Municipal Fire Districts	
ISO Class	**No. in N.C.**	**ISO Class**	**No. in N.C.**
1	0	1	1
2	0	2	5
3	0	3	22
4	5	4	41
5	33	5	111
6	61	6	96
7	47	7	50
8	7	8	15
9S	986	9S	14
9E	58	9E	0

Fire Department Statistics

As of January 1, 2003	
Fire Departments in North Carolina	1,314
Municipal Fire Departments	250
Non-Profit Corporations	1,064
Fire Districts in North Carolina	1,548
Rural Fire Districts in North Carolina	1,193
Municipal Fire Districts	341
Municipal Fire Districts with ISO Class of 9S	14
Rural Fire Districts with ISO Rating Less than a Class 9S	151
Fire Districts with Split/Class Rating (ex. 6/9S)	472

The Department of Insurance has responsibility for conducting inspections of departments in areas with a population less than 100,000. These inspections serve to determine the rate classification for property insurance.

The inspection program is designed to help improve fire protection for the citizens of North Carolina and increase the safety of our state's firefighters. Oftentimes it results in

lower in lower property insurance rates. This section continues to assist local governments with fire district mapping, setting up tax districts, preparing fire departments for NCRRS surveys and by providing information on benefit programs. The section also serves as an information resource on rural fire protection for local government officials.

The Department also has duty of inspecting more than 1,000 volunteer fire departments in North Carolina. The results of these inspections are reported to the North Carolina Fire Rate Bureau and are used by them in filing future rates for fire insurance costs. The fire departments are reinspected on a two-to-three year cycle in order to maintain a current picture of the quality of fire protection in North Carolina and to assist the departments in making improvements.

These inspections ensure that the fire departments are maintaining the minimum rating requirements. Meeting these requirements provides for the eligibility of the department's personnel to participate in the Fireman's Pension Fund, in the Firemen's Death Benefit Act and in the Firemen's Relief Fund. Meeting these requirements also allows property owners living in the fire district to enjoy a lower fire insurance premium on their property insurance.

Fire Dept. Inspection Summary: 2002

	East	West	State Total
Counties Inspected	42	45	87
Districts Inspected	381	362	743
Districts Meeting Requirements	376	354	730
Districts Not Meeting Requirements	5	8	13
Percentage Meeting Requirements	99	98%	98%
Percentage Not Meeting Requirements	1%	2%	2%

Further duties of this section include providing fire protection information to local government officials, county fire marshals, local fire associations and citizens of North Carolina. Inspectors also assist with programs to fire departments and rescue squads on financing alternatives, record keeping, contract agreements, benefits and other administrative subjects.

Prevention, Programs and Grants Division

The Prevention, Programs and Grants Division is responsible for the development of comprehensive injury prevention strategies. Reducing deaths and injuries, especially to children, along with the associated economic costs, is the focus of the Injury Prevention Section. Unintentional injuries caused by fires/burns, falls, traffic crashes, poisoning and drowning are targeted. The section's primary goal is to raise awareness about the major causes of injury and develop interventions.

Special programs directed by this section include NC SAFE KIDS, Risk Watch, Learn Not To Burn and NC SAFE KIDS Buckle Up. The mission of these four programs is to reduce unintentional childhood injuries from birth through age 14, by coordinating a network of public and private partners. In 2002, over $1,200,000 in grants and public/private partnerships have been committed for NC SAFE KIDS. The Governor's Highway Safety Program provided grants exceeding $800,000 to NC SAFE KIDS Buckle Up in FY 2002.

In partnership with North Carolina Operation Lifesaver (NCOL), the Injury Prevention Section continues to offer grade crossing safety training for emergency responders. Individuals are certified to train their peers in a program called "They Shouldn't Die This Way." The goal of the program is to reach over 80,000 emergency responders with the NCOL message.

Research is a key component in the efforts of the Injury Prevention Section. Areas researched include impact studies, product-specific studies, educational methods research and general trend analysis. Data collected through the North Carolina Fire Incident Reporting System and Casualty Reporting System determines the development of fire/burn prevention and safety programs for emergency responders.

The Research and Program Development section facilitates curriculum development and the related audio/visual materials for all fire and rescue training programs. In addition, this section designs and develops informational and educational materials for publication and distribution to the public. The *Fire & Rescue Journal* is published quarterly by the Research and Program Development group.

Funds

Working closely with the North Carolina Fireman's Association, division staff continues to improve collection and disbursement of the Firemen's Relief Fund. Significant effort has been made to reduce the number of fire departments disqualified due to ineligibility. The Rescue Relief Fund was created in 1987 to assist rescue personnel in need.

Total Firemen's Relief Fund tax collected for 2001 was $3,731,391.12 and a total of $3,342,348.37 was disbursed to fire departments meeting all General Statute requirements. Total Rescue Relief Fund tax collected for 2002 was $829,686,.31 and a total of $713,530.22 was disbursed to the North Carolina Association of Rescue and EMS to distribute the funds according to General Statute 58-88-5. Total Rescue Relief Fund tax collected for 2001 was $699,362.39 and a total of $615,438.89 was disbursed to the North Carolina Association of Rescue and EMS to distribute the funds according to GS 58-88-5. The Department of Insurance was given the responsibility by the General Assembly to administer the Volunteer Fire Department Fund and the Volunteer Rescue/EMS Fund in 1988. The intent of these programs is to financially aid volunteer fire departments and

rescue providers to purchase related equipment and to make capital expenditures, based on need.

The Volunteer Fire Department Fund matches on a dollar-for-dollar basis up to $20,000. The Volunteer Rescue/EMS Fund will match on a dollar-for-dollar basis up to $15,000. The Volunteer Rescue/EMS Fund also allows rescue providers with liquid assets of less than $1,000 to apply for a $3,000 non-matching grant. Approved monies for volunteer fire departments and volunteer rescue providers through the Volunteer Fire Department Fund and the Volunteer Rescue/EMS Fund since 1988 exceeds $35,000,000.

Volunteer Fire Department and Rescue/EMS Grants

	2001	2002
Volunteer Fire Department Fund	$2,784,044.28	$3,443,905.30
Volunteer Rescue/EMS Fund	$1,050,029.84	$1,322,081.11

The Volunteer Workers Compensation Fund was established by the General Assembly to provide low cost workers compensation insurance coverage to non-municipal volunteer fire departments, rescue squads and EMS departments. It was established as a self-funded program within the Department of Insurance. Each fire, rescue or EMS department pays $50 per individual for volunteers and $250 per individual for career personnel. The fund is supplemented each year by an appropriation from the General Assembly. Per requirements of the statutes, the fund is governed by the North Carolina Fire and Rescue Commission housed within the Department of Insurance. The Commission contracts with a third party administrator (TPA) to handle administration of the fund, as directed by statute. Currently Key Risk management services serves as the TPA.

Remembering When Overview

The Office of State Fire Marshal (OSFM) and the Seniors' Health Insurance Information Program (SHIIP) have partnered to present the National Fire Prevention Association's fall and burn prevention series called Remembering When. A nostalgic trivia game is the hook that entices senior citizen audiences to learn how to prevent falls and burns, common injuries among the state's older citizens. By sharing staff and resources, OSFM and SHIIP hope to reach seniors in every county of the state within the next few years. A grant (in the amount of over $70,000) from CDC through the North Carolina Department of Health has been allocated for year 2002.

Learn Not to Burn Overview

Learn Not To Burn is an NFPA fire and burn prevention curriculum taught by the classroom teacher to students in Pre-School through Grade 8. Each teacher is provided with manuals including lesson plans, knowledge tests and other materials for use in the classroom.

Juvenile Fire Setters

OSFM has created the North Carolina Counsel for the Prevention of Juvenile Fire Setters. The Council is comprised of members from the fire service, law enforcement, juvenile justice, medical and social services agencies. The purpose of the council is to address the serious concern of the growing rate of Juvenile firesetting in North Carolina.

Risk Watch

Risk Watch is a comprehensive injury prevention curriculum for children in preschool through Grade 8. The program is taught in the classroom by teachers with support from community resources. Students act out learning activities by assuming character roles appropriate to their development stage. The program covers the eight safety areas that effects children the most with injuries and deaths, those being motor vehicle; fire and burn; choking, suffocation, and strangulation; poisoning; falls; firearms injury; bike and pedestrian; and water.

North Carolina Code Officials Qualification Board

The board is organized under the provisions of Chapter 143, Article 9C of the North Carolina General Statutes. A list of members follows, along with the individual or organization by whom they were appointed.

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North Carolina Building Code Council

NC General Statutes 143-138 authorize the N.C. Building Code Council to prepare, adopt and amend the State Building Code. The council consists of 17 members appointed by the governor for six-year terms. Statutes require that members have expertise in areas relating to construction safety. The council meets twice a year in June and December.

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North Carolina Fire and Rescue Commission

The North Carolina Fire and Rescue Commission is charged with developing certification standards for all levels of fire service and rescue personnel and coordinating the state's involvement with the Federal Emergency Management Agency and the U.S. Fire Administration.

The commission is also responsible for developing a master plan for fire prevention and control, increasing professional skills of fire protection and fire fighting personnel, serving as a central clearinghouse of information relating to the state's fire service activities, and handling federal and state grants.

Member	Organization
• C. Harley Cook, Chair	N.C. Society of Fire Service Instructors
• Donald Whitaker	N.C. Association of Fire Chiefs
• Dean Wall, Vice-Chair	N.C. Association of Rescue and EMS, Inc.
• Robert Poe	N.C. Association of Rescue and EMS, Inc
• Ken Dilday	N.C. Firemen's Association
• Robert Griffin	N.C. Firemen's Association
• Chuck Gallyon	N.C. Fire Marshal's Association
• Charles Howell	N.C. Association of County Commissioners
• Vacant	N.C. League of Municipalities
• Cloyce Anders	Public-at-Large
• Marvin O. Wilson	Speaker of the House Appointee
• Vacant	President of the Senate Appointee
• Fred O'Neal	Governor's Appointee
• Ed Duffield	Professional Firefighters and Paramedics of N.C.
• Mike Tapp	County Fire Marshal's Association

North Carolina Home Inspectors Licensure Board

NC General Statutes 143-151.43 Article 9F created the North Carolina Home Inspectors Licensure Board to license those who perform home inspections for compensation. A list of the eight members follows, along with the individual by whom they were appointed.

Members

John W. Hamrick
Chairman
Howard Perry & Walston Realty
8 Consultant Place
Durham, NC 27707
(919) 401-7600
(919) 493-0147 Fax

Gerald W. Canipe
ARCHISPEC
4200 Morganton Road, Suite 200-03
Fayetteville, NC 28314
(910) 868-3086
(910) 868-7184 Fax

Roger R. Pierce
Pierce Services, Inc
P. O. Box 1429
Cashiers, NC 28717
(828) 743-5013
(828) 743-3496 Fax

W. Robert Schultz
Secretary Treasurer
2904 Dunkirk Drive
Raleigh, NC 27613
(919) 845-9995
(919) 845-9915 Fax

Jeff Vaughn
Vice Chairman
Coastal Home Inspections
P. O. Box 628
New Bern, NC 28563
(252) 637-4081
(252) 633-4589 Fax

Tom Edwards
Eagle Eye Home Inspections, Inc.
P.O. Box 2086
Jamestown, NC 27282
(336) 882-6321
(336) 882-6373 Fax

Grover Sawyer
N. C. Department of Insurance
410 N. Boylan Avenue
Raleigh, NC 27603
(919) 733-3901
(919) 733-9171 Fax

T. Larry Summer
Progressive Builders
300 W. Main Street, Suite C
Cherryville, NC 28021
(704) 435-4909
(704) 435-121 Fax

North Carolina Manufactured Housing Board

The Board is empowered to issue and revoke licenses, require bonds, resolve complaints and promulgate rules as necessary to carry out these goals. The following is a list of members and the individual or industry they represent as of January 2001.

Members

Chairman: James E. Long
Insurance Commissioner
PO Box 26387
Raleigh, NC 27611

Designated Chairman: Dascheil Propes
Chief Deputy Insurance Commissioner
PO Box 26387
Raleigh, NC 27611

Insurance Commissioner Appointees		
Representing - Public	Ms. Linda Willey PO Box 232 Manteo, NC 27954	Term (1st): 10-01-99 to 09-30-02
Representing - Public	Mr. Johnnie Robbins Jim Perry & Company Realtors 3118 N. Croatan Hwy. Ste. 103 Kill Devil Hills, NC 27948-9252 252-441-3051 252-441-2936 (Fax)	Term (2nd): 10-01-99 to 09-30-02
Governor Appointees		
Representing - Manufacturer	Mr. B. J. Williams 704 Flagstone Way Durham, NC 27712 1-800-675-6705	Term (2nd): 10-01-99 to 09-30-02
Representing - Dealer	Mr. Wesley Layton Layton Sales 4431 Sunset Ave. Rocky Mount, NC 27804 252-443-1121 252-443-1122(Fax)	Term (1st): 10-01-99 to 09-30-02
Speaker Appointees		
Representing - Finance	Mr. Danny Chandler Affordable Funding,Inc. 5711 Six Forks Rd, Ste. 201 Raleigh, NC 27609 919-518-1432	Term (1st): 10-01-00 to 09-30-03
Representing - Insurance	Mr. Clark E. Crowther American Moders Ins. Group 3317 Fielding Ave. Charlotte, NC 28211 704-365-5524	Term (1st): 10-01-00 to 09-30-03
President Pro Tem of Senate Appointees		
Representing - Supplier	Mr. Troy Brickey Triad Mobile Home Supply 3968 Patterson Ave. Winston Salem, NC 27105 910-744-9071 910-744-9073(Fax)	Term (1st): 10-01-98 to 09-30-01
Representing - Set-Up Contractor	Mr. J. P. Cauley B&B Movers, Inc. 2473 Hwy. 11, North Kinston, NC 28501-9747 252-523-7995 252-523-0482(Fax)	Term (1st): 10-01-98 to 09-30-01

Public Officers and Employees Liability Insurance Commission

The Commission is given authority under North Carolina General Statutes 58-31-25 and 58-32-1 through 58-32-30 to make available a plan of professional liability insurance coverage for all law enforcement officers, public officials, and employees of any political subdivision of the State. The Public Officers and Employees Liability Insurance Commission (POELIC) is empowered to negotiate with insurance companies for the most favorable rates and coverage.

The commission also serves as liaison between the companies and those insured, to resolve any issues which may arise. The commission consists of 11 members representing city, county, and state governments, sheriffs and police departments, and the insurance industry. It meets at least four times each year, on or about the 15th of January, April, July and October. Following is a list of the members:

Members	**Representing**
Mr. Joseph R. Kluttz, Chair	Speaker of the House
Deputy Chief Kent Fletcher	N.C. Police Chiefs and N.C. Police Executives Assoc.
Mrs. Susan Klakoff	N.C. Association of County Commissioners
Sheriff Dane Mastin	N.C. Sheriffs Association
Mr. Bob Mays	Independent Insurance Agents of N.C.
Mr. J. Dal Snipes	Independent Insurance Agents of N.C.
Mr. David Walker	President Pro Tempore

Ex-Officio Members:

Mr. William A Dudley	Crime Control and Public Safety
Mr. W.A. "Doc" Hoggard	Attorney General's Office
Mr. J. Thomas Sutton, III	Commissioner of Insurance

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 8, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
P Logan	NC DOT
J Long	NC DOT
F. Fulcher	NC DOT
Bill Hale	Jordan Price
Susan Vaturi	Vaturi
Robert Pittard	Young Moore
David Stalter	Stalter
Barbara Canada	MFIS
Ann Dees	H&W
Robert Cochran, M.D.	NC Med. Society
Frank Reynolds, MD	NC Med Soc.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 8, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carolyn Jennings	G.A.
Stephanie Simpson	NC Assn of Realtors
Erin Carnahan	NCINS
JOHN PETERSON	NCINS
Amy Dobson	NC. State Watch.
MIKE STEVENSON	MURPHY MEDICAL CENTER
Warren Savage	Bailey & Dixon
Mark Seipt	NC LICENSING BD - G.C.
Mark Dixon	Capitol Group
Joan Blackburn	NC Association of County Commissioners
Greg Wood	Southern Health Care System

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 8, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alan Harris	Physician
Ted Kaplan	KEL Corp.
H.C. Cullen Jr.	MD Corp
Mike Causey	NC Glaucoma

2003-2004

SENATE COMMERCE

COMMITTEE MINUTES

MEMBERSHIP

SENATE COMMERCE COMMITTEE
2003-2004 Biennium

Senator R.C. Soles, Chair
Room 2022, LB 733-5963
Joan Leatherman, Janet Blalock

Senator David Hoyle, Vice Chair
Room 300A, LOB 733-5734
Penny Williams

Senator Tony Rand, Vice Chair
Room 300C, LOB 733-9892
Evelyn Costello

Senator Philip Berger, Ranking Minority
Room 1121, LB
Barbara Eldridge

Senator Tom Apodaca
Room 1119, LB
Nancy Pulley

Senator Patrick Ballantine
Room 1127, LB 715-2525
Luci Johnson

Senator Robert Carpenter
Room 517, LOB 733-5875
Helen Carpenter

Senator Walter Dalton
Room 523, LOB
Mona Fitzgerald

Senator Katie Dorsett
Room 2106, LB
Joyce Hodge

Senator Jim Forrester
Room 1129, LB
Mary Watson

Senator Virginia Foxx
Room 1120, LB 733-5743
Janet Black

Senator Linda Garrou
Room 627, LOB
Gail Bishop

Senator Kay Hagan
Room 410, LOB
Susan Hamilton

Senator John Kerr
Room 526, LOB 733-5621
Evelyn Hartsell

Senator Vernon Malone
Room 2113, LB 733-5880
Claudette Howell

Senator Steve Metcalf
Room 300B, LOB 733-5707
Anne Wilson

Senator Tony Moore
Room 622, LOB
June Kendall

Senator Robert Pittenger
Room 521, LOB
Melissa Mitchell

Senator William Purcell
Room 625, LOB
Lorraine Blake

Senator Robert Rucho
Room 1113, LB 733-5650
Helen Long

Senator Larry Shaw
Room 621, LOB 733-9349
Barbara Lee

Senator R.B. Sloan
Room 406, LOB
Samantha Edwards

2003-2004 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0070	Justice	PENDER SUBDIVISION REGULATION.	*SR	Ch. SL 2003-245	03-27-03	06-11-03
H0116	Hill	FARM MACHINERY LAW/ NOTICE OF TERMINATION.	*SR	Ch. SL 2003-195	05-01-03	06-03-03
H0173	Howard	COSMETIC ART/ CONTINUING ED/PENALTY CHANGE.	*S	Ref to Commerce. If fav, re-ref to Finance	07-14-03	
H0208	Wright	MANAGED CARE/HLTH BENEFITS CLARIFYING-AB.	*S	Re-ref Com On Rules and Operations of the Senate	05-05-03	05-06-03
H0270=	Setzer	INSURANCE TECHNICAL CORRECTIONS.-AB	SR	Ch. SL 2003-221	04-03-03	06-05-03
H0276	Setzer	INSURANCE FINANCIAL AMENDMENTS OMNIBUS.-AB	*SR	Ch. SL 2003-212	04-23-03	05-28-03
H0283	Nye	PROPERTY AND CASUALTY INSURANCE OMNIBUS.-AB	*SR	Ch. SL 2003-290	04-28-03	05-21-03
H0328	Howard	AMEND REAL ESTATE LICENSING LAWS/FEES.-AB	*S	Pres. To Gov. 7/ 19/2003	04-23-03	05-22-03
H0339=	Wright	LIFE AND HEALTH INSURANCE OMNIBUS.-AB	*S	Conf Com Appointed	05-05-03	06-18-03
H0356=	Tolson	REMOVE SUNSET/ MUNICIPAL ELECTRIC SERVICE.	S	Ref To Com On Commerce	03-26-03	
H0357	Barnhart	NO CREDIT CARD NUMBER ON RECEIPTS.	*SR	Ch. SL 2003-206	04-23-03	05-28-03
H0358	Starnes	INCREASE DAMAGE LIMITS FOR MV ACCIDENTS.	*SR	Ch. SL 2003-137	04-07-03	05-20-03
H0475	Alexander	REGISTRATION OF BIRTH & DEATH CERTIFICATES.	SR	Ch. SL 2003-60	03-26-03	05-13-03
H0560	Holliman	DISAPPROVE CERTAIN LIFE INSURANCE RULES.	*SR	Ch. SL 2003-143	04-28-03	05-27-03
H0609=	Baker	ENHANCE AMUSEMENT DEVICE SAFETY.	*SR	Ch. SL 2003-170	04-30-03	05-27-03
H0635	Rayfield	INVISIBLE FENCE SYSTEMS--SIGNS REQUIRED.	*S	Ref To Com On Commerce	05-05-03	
H0744=	Hackney	MANAGED CARE PATIENT ASSISTANCE.	SR	Ch. SL 2003-105	04-22-03	05-20-03
H0829=	Holliman	ANNUITY NONFORFEITURE RATE CHANGE.	SR	Ch. SL 2003-144	04-28-03	05-27-03
H0864=	Brubaker	GUARANTEED ENERGY SAVINGS CONTRACT EFFICIENCY.	*SR	Ch. SL 2003-138	04-29-03	05-27-03
H0888	Moore	PURCHASE FLEX/SCH TRANSPORTATION.	S	Re-ref Com On Rules and Operations of the Senate	05-05-03	05-06-03
H0892	Saunders	WORKERS COMP./CARRIER DRIVERS.	*SR	Ch. SL 2003-235	05-05-03	06-04-03
H0895	Gibson	TEMP. RULES FOR GEN. CONTRS BOARD/BIDDING.	S	Ref To Com On Commerce	04-29-03	
H0900	Gibson	RESTAURANT ABC PERMITS.	SR	Ch. SL 2003-135	04-28-03	05-27-03

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2003-2004 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0913	Brubaker	UNIVERSAL TELEPHONE SERVICE PROVIDER.	SR	Ch. SL 2003-99	05-01-03	05-20-03
H0964	Warner	FURNITURE REQUIREMENTS CONTRACTS.	S	Ref To Com On Commerce	05-05-03	
H0974	Hill	PROHIBIT STATE PURCHASE OF RECONSTITUTED MILK.	*S	Pres. To Gov. 7/17/2003	05-05-03	06-05-03
H0986	Lucas	MV INSURER TO DISCLOSE FINANCIAL INTEREST.	*S	Pres. To Gov. 7/19/2003	05-05-03	06-09-03
H0994	K. Williams	PUBLIC WORKS EXEMPTION.	*SR	Ch. SL 2003-305	04-29-03	06-04-03
H0994	K. Williams	PUBLIC WORKS EXEMPTION.	*SR	Ch. SL 2003-305	06-11-03	06-18-03
H0999=	Hackney	TONER/INKJET CARTRIDGES.	*S	Pres. To Gov. 7/17/2003	05-01-03	07-09-03
H1023	Goodwin	UNINSURED/ UNDERINSURED MOTORIST COVERAGE.	*SR	Ch. SL 2003-311	05-01-03	06-16-03
H1065	L. Allen	REDEVELOPMENT COMM. PROPERTY CONVEYANCE.	*SR	Ch. SL 2003-66	05-01-03	05-13-03
H1066	Alexander	HEALTH PLANS DISCLOSE FEE SCHEDULES/CODING.	*S	Pres. To Gov. 7/18/2003	05-05-03	07-15-03
H1088	Barnhart	CONSUMERS' RIGHT-TO-KNOW ACT.	*S	Ref To Com On Commerce	05-05-03	
H1093	Culpepper	TECHNICAL AMENDMENTS/ INSURANCE GUARANTY ASSOC.	*SR	Ch. SL 2003-167	05-05-03	05-27-03
H1107	C. Wilson	UTILIZ. REVIEW & GRIEVANCE AMENDMENTS.	*S	Ref To Com On Commerce	05-05-03	
H1129	Fox	2003 OMNIBUS LABOR LAW CHANGES.	*SR	Ch. SL 2003-308	04-29-03	06-05-03
H1140	Allred	NORTH CAROLINA 'QUICK CLEARANCE' ACT.	*SR	Ch. SL 2003-310	05-01-03	06-04-03
H1152	Cole	INSTALLING MV PARTS AND AIR BAGS.	*S	Ref To Com On Commerce	05-05-03	
H1181	Goodwin	WORKPLACE SAFETY/ REINSPECTIONS.	*SR	Ch. SL 2003-174	05-05-03	06-03-03
H1182	Goodwin	EXPAND USURY EXEMPTION.	*S	Pres. To Gov. 7/19/2003	05-05-03	06-03-03
H1201	Allred	CONSECUTIVE WATER SYSTEMS/MANUFACTURED HOMES.	SR	Ch. SL 2003-173	05-01-03	06-03-03
H1203=	Gibson	AMEND MOTOR FUEL MARKETING ACT.	*S	Ref to Judiciary I. If fav, re-ref to Commerce. If fav, re-ref to Finance	05-05-03	05-06-03
H1213	Culpepper	REGULATE DEFERRED DEPOSIT.	*S	Re-ref Com On Finance	05-05-03	05-06-03
H1213	Culpepper	REGULATE DEFERRED DEPOSIT.	*S	Re-ref Com On Finance	05-27-03	06-18-03
$ S0050	**Patrick J. Balla**	**HIGH-RISK INSURANCE POOL.**	**S**	**Ref to Commerce. If fav, re-ref to Appropriations/**	**02-17-03**	

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2003-2004 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				Base Budget		
S0107	Robert C. Carpen	MV INSURERS-NO MANDATE ON NONORIGINAL PARTS.	*S	Ref To Com On Judiciary III	02-20-03	04-17-03
S0108=	Robert C. Carpen	NO COMPREHENSIVE DEDUCTIBLE ON WINDSHIELDS.	S	Ref To Com On Commerce	02-20-03	
S0109=	Robert C. Carpen	MOTOR VEHICLE GLASS REPAIR.	*S	Ref To Com On Judiciary III	02-20-03	04-17-03
S0290	Katie G. Dorsett	GREENSBORO MINIMUM HOUSING CODES.	*SR	Ch. SL 2003-76	03-05-03	04-21-03
S0327	R. C. Soles, Jr.	CONFIRMING JOSEPH A. SMITH JR./COMM'R OF BANKS	SR	Ch. Res 2003-30	03-10-03	03-18-03
S0338=	Joe Sam Queen	REMOVE SUNSET/ MUNICIPAL ELECTRIC SERVICE.	SR	Ch. SL 2003-24	03-10-03	03-25-03
S0346=	William R. Purce	REPEAL LONG-TERM CARE INS. TAX CREDIT SUNSET.	S	Ref To Com On Commerce	03-11-03	
S0355=	Richard Stevens	WAKE FOREST FORCE LIMIT.	SR	Ch. SL 2003-32	03-11-03	04-01-03
S0378	Charlie S. Danne	311 SERVICE.	S	Ref To Com On Public Utilities	03-12-03	04-24-03
S0437	David W. Hoyle	GEN. CONTRS. BOARD/ BIDDING.	*SR	Ch. SL 2003-231	03-17-03	04-08-03
S0469	Fletcher L. Hart	UNFAIR TRADE PRACTICES/LIFE INSURANCE SALES.	*S	Re-ref Com On Insurance	03-20-03	04-17-03
S0501=	John H. Kerr III	ENHANCE ELEVATOR & AMUSEMENT DEVICE SAFETY.	S	Ref To Com On Commerce	03-24-03	
S0506	Tony Rand	DISAPPROVE CERTAIN LIFE INSURANCE RULES.	S	Ref To Com On Commerce	03-24-03	
S0510	Eric Miller Reev	SAFETY AT AUTOMATIC TELLER MACHINES.	*S	Ref To Com On Financial Institutions	03-24-03	04-16-03
S0513	Philip E. Berger	ADJUST WORKERS' COMP. AWARD SCHEDULE.	S	Ref To Com On Commerce	03-24-03	
S0521	Tony Rand	PYROTECHNIC REGULATION ENHANCED.	*SR	Ch. SL 2003-298	03-25-03	04-21-03
S0536	David W. Hoyle	SMALL BUSINESS OMBUDSMAN OFFICE.	S	Ref to Commerce. If fav, re-ref to Appropriations/ Base Budget	03-26-03	
S0540	Fletcher L. Hart	APA RULES/ECONOMIC IMPACT REVIEW.	S	Ref To Com On Commerce	03-26-03	
S0550=	Kay R. Hagan	CREMATORY ACT CHANGES.	*S	Pres. To Gov. 7/ 18/2003	03-27-03	06-09-03
S0557	David W. Hoyle	REQUIRE DRUG TEST BEFORE LICENSURE/CAB DRIVER.	SR	Ch. SL 2003-65	03-27-03	04-15-03
S0558=	David W. Hoyle	DISCLOSURE OF PRIOR MV DAMAGE.	*SR	Ch. SL 2003-258	03-27-03	04-17-03
S0559=	David W. Hoyle	CLARIFY MV DEALER FRANCHISE LAWS.	*SR	Ch. SL 2003-113	03-27-03	04-17-03

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2003-2004 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S0560	Tony Rand	AMEND REAL ESTATE LICENSE LAWS.	S	Ref To Com On Commerce	03-27-03	
S0573=	Daniel G. Clodfe	MANAGED CARE PATIENT ASSISTANCE.	S	Ref To Com On Commerce	03-31-03	
S0589=	Eleanor Kinnaird	LIVABLE STATE MINIMUM WAGE.	S	Ref To Com On Commerce	03-31-03	
S0590	Eleanor Kinnaird	MORATORIUM ON SOFT DRINK CONTRACTS/ SCHOOLS.	S	Ref to Commerce. If fav, re-ref to Rules and Operations of the Senate	03-31-03	
S0595=	Philip E. Berger	CONSCIENCE PROTECTION/ CONTRACEPTIVES.	S	Ref To Com On Commerce	03-31-03	
S0603=	William R. Purce	LIFE AND HEALTH INSURANCE OMNIBUS.	S	Ref To Com On Commerce	03-31-03	
S0607	William R. Purce	MNGD CARE/HEALTH BENEFITS CLARIFYING CHANGES.	S	Ref To Com On Commerce	03-31-03	
S0613	Fletcher L. Hart	CONTINUING CARE RET./ TECH. CHANGES.	S	Ref To Com On Commerce	03-31-03	
S0614=	Fletcher L. Hart	INSURANCE TECHNICAL CORRECTIONS.	S	Ref To Com On Commerce	03-31-03	
S0620=	Walter H. Dalton	PURCHASING FLEXIBILITY FOR SCHOOLS.	*SR	Ch. SL 2003-147	03-31-03	04-21-03
S0631	Daniel G. Clodfe	SELF-INSURED LOCALITIES.	S	Ref To Com On Commerce	04-01-03	
S0632=	Daniel G. Clodfe	WORKERS' COMP./ AGRICULTURAL EMPLOYMENT.	S	Ref To Com On Commerce	04-01-03	
S0655	Stephen M. Metca	AMEND LOCKSMITH ACT/ CRIMINAL CHECKS/FEES.	*S	Pres. To Gov. 7/ 16/2003	04-01-03	05-14-03
S0658	R. C. Soles, Jr.	APPELLATE PROCEDURE/ STATE BANKING COMMISSION.	*SR	Ch. SL 2003-63	04-01-03	04-14-03
S0661	Eric Miller Reev	PRISONER HEALTH INFORMATION/EMS CHANGES.	*S	Ratified	04-01-03	05-01-03
S0670	Fletcher L. Hart	CREDITABLE SERVICE/ WORKERS' COMPENSATION.	S	Re-ref Com On Pensions & Retirement and Aging	04-02-03	04-24-03
S0673	David W. Hoyle	CLARIFY FIRE TAX CALCULATION.-AB	S	Re-ref Com On Finance	04-02-03	04-15-03
$ S0675	**David W. Hoyle**	**CODE OFFICIALS PROFESSIONAL QUALIFICATIONS.**	**S**	**Ref to Commerce. If fav, re-ref to Appropriations/ Base Budget**	**04-02-03**	
S0676	David W. Hoyle	REVISE THE BANKING LAWS OF NORTH CAROLINA.	*S	Re-ref Com On Finance	04-02-03	04-15-03
S0685=	David F. Weinste	CONFORM MORTGAGE LENDING LAWS.	S	Ref To Com On Commerce	04-02-03	
S0691	Scott Thomas	PROPERTY AND CASUALTY INSURANCE OMNIBUS.	S	Ref To Com On Commerce	04-02-03	
S0743=	Jeanne H. Lucas	ENERGY ASSISTANCE ACT.	S	Ref To Com On	04-03-03	

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2003-2004 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				Commerce		
S0750	Kay R. Hagan	INCREASE PERMIT LIMIT FOR BREWERIES.	*S	Pres. To Gov. 7/ 20/2003	04-03-03	04-23-03
S0755=	Linda Garrou	SUPPLEMENTAL INSURANCE FOR RETIREES.	S	Ref To Com On Commerce	04-03-03	
S0758	Tony Rand	MORE SM. EMPLOYER HEALTH INS. AVAILABLE.	*S	Ref To Com On Insurance	04-03-03	04-23-03
S0767	Tom Apodaca	CONTRACT SURETY BONDS.	S	Ref To Com On Commerce	04-03-03	
S0769	Scott Thomas	BEACH PLAN HOMEOWNERS POLICY RATE SETTING.	*SR	Ch. SL 2003-158	04-03-03	04-24-03
S0770	Scott Thomas	INSURERS REVEAL FINANCIAL INT IN REPAIRERS.	S	Ref To Com On Commerce	04-03-03	
S0771	Scott Thomas	CREDIT SCORING LIMITATION.	*SR	Ch. SL 2003-216	04-03-03	04-23-03
S0773	Walter H. Dalton	COMM. COLL. FACILITY/ PUBLIC-PRIVATE P'SHIP.	*SR	Ch. SL 2003-286	04-03-03	04-14-03
S0775	Walter H. Dalton	PRELITIGATION MEDIATION OF INSURANCE CLAIMS.	*SR	Ch. SL 2003-307	04-03-03	04-14-03
S0777	Virginia Foxx	AMEND DEALER LICENSING LAW.	*SR	Ch. SL 2003-254	04-03-03	04-15-03
S0782=	Charlie S. Danne	HEALTH INSURANCE COVERAGE/EARLY INTERVENTION.	S	Ref To Com On Commerce	04-03-03	
S0785=	Fletcher L. Hart	ANNUITY NONFORFEITURE RATE CHANGE.	S	Ref To Com On Commerce	04-03-03	
S0787=	Eric Miller Reev	NO MOTOR FUEL SALES LIMITS.	S	Ref To Com On Commerce	04-03-03	
S0789	Jerry W. Tillman	MOTOR VEHICLE REPAIRS/ UNFAIR TRADE PRACTICES.	S	Ref To Com On Commerce	04-03-03	
S0799	David W. Hoyle	TELEPHONE SOLICITATIONS/CONSENT TO CHARGE.	*S	Ref To Com On Public Utilities	04-03-03	04-16-03
S0801	David W. Hoyle	INVESTIGATE CERTAIN TELECOM. ACTIVITIES.	*S	Ref To Com On Public Utilities	04-03-03	04-24-03
S0803	Tony Rand	CASINO NIGHTS.	S	Ref To Com On Commerce	04-03-03	
S0812	Tony Rand	SCHOOL-RELATED LICENSE SUSPENSION/ AUTO INS.	S	Ref To Com On Commerce	04-03-03	
S0813	Tony Rand	CONTROLLER'S FEE.	*S	Ref To Com On Finance	04-03-03	04-16-03
S0814	Tony Rand	CLARIFY COMPET. TELECOMMUNICATIONS STATUTES.	*SR	Ch. SL 2003-91	04-14-03	04-29-03
S0842=	Fern Shubert	PRESC. DRUG DISCOUNTS/ UNINSURED ELDERLY.	S	Ref To Com On Commerce	04-03-03	
S0846=	Wib Gulley	SOLAR ENERGY SYSTEMS.	*S	Re-ref Com On Judiciary IV	04-03-03	04-23-03
S0847	Wib Gulley	TENANT LATE FEES.	*S	Pres. To Gov. 7/ 17/2003	04-03-03	04-21-03
S0849=	Wib Gulley	NET METERING.	S	Ref To Com On	04-03-03	

'$' indicates the bill is an appropriation bill.
A bold line indicates the bill is an appropriation bill.
'*' indicates that the text of the original bill was changed by some action.
'=' indicates that the original bill is identical to another bill.

2003-2004 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				Commerce		
S0861=	Daniel G. Clodfe	ADOPT INTERNATIONAL BUILDING CODE.	S	Ref To Com On Commerce	04-03-03	
S0872	Scott Thomas	UNWANTED TELEPHONE SOLICITATIONS.	*S	Pres. To Gov. 7/ 20/2003	04-03-03	04-29-03
S0887	Robert C. Carpen	OVARIAN CANCER DET./ HIGH RISK WOMEN.	*SR	Ch. SL 2003-223	04-03-03	04-23-03
S0900	Hugh Webster	TELEPHONE SOLICITATIONS/ INCREASE PENALTIES.	S	Ref to Commerce. If fav, re-ref to Finance	04-03-03	
S0905	Joe Sam Queen	RAISE STATE MINIMUM WAGE.	S	Ref To Com On Commerce	04-03-03	
S0913=	Daniel G. Clodfe	STREAMLINE BUILDING CODE.	S	Ref To Com On Commerce	04-03-03	
S0947	David W. Hoyle	CREDIT CARD NUMBERS ON RECEIPTS.	S	Ref To Com On Commerce	04-03-03	
S0963	A. B Swindell	PREVENT PRICE GOUGING DURING DISASTERS.	*S	Pres. To Gov. 7/ 17/2003	04-03-03	04-24-03
S0966	Walter H. Dalton	INSURANCE PERSONAL INFO. SAFEGUARDS.	*SR	Ch. SL 2003-262	04-03-03	04-10-03
S0967	Walter H. Dalton	INSURANCE FINANCIAL AMENDMENTS OMNIBUS.	S	Ref To Com On Commerce	04-03-03	
S0971=	Eleanor Kinnaird	TONER CARTRIDGE REUSE PROHIBITIONS VOID.	S	Ref To Com On Commerce	04-03-03	
S0991	Eric Miller Reev	CONSUMER'S RIGHT TO KNOW AND ACT.	*S	Ref to the Com on State Government and, if favorable, to the Com on Judiciary II	04-03-03	04-29-03
S0995	Linda Garrou	SCHOOL CONSTRUCTION/ REPAIR FLEXIBILITY.	*SR	Ch. SL 2003-269	04-03-03	04-17-03
S1021=	R. C. Soles, Jr.	CONFIRM JO ANNE SANFORD UTILITIES COMMISSION.	SR	Ch. Res 2003-16	05-07-03	05-20-03

'$' indicates the bill is an appropriation bill.
A bold line indicates the bill is an appropriation bill.
'*' indicates that the text of the original bill was changed by some action.
'=' indicates that the original bill is identical to another bill.

AGENDA

SENATE COMMERCE COMMITTEE
Tuesday, March 18, 2003 at 11:00 a.m.
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Introductions of Members and Staff

III. Bills

• SJR 327	Confirmation of Joseph Smith to be Commissioner of Banks	Sen. Soles
• SB 338	Remove Sunset/Municipal Electric Service	Sen. Queen

IV. Presentation on State of Banking in N.C. and an Overview of the Office of Commissioner of Banks

V. Other Business

VI. Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, March 18, 2003 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, March 18, 2003, in Room 1027 of the Legislative Building. Fourteen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles opened the meeting by introducing the pages and the committee staff, and by having each member present briefly introduce him or herself. He explained that, over the next few weeks, the committee would be having presentations from heads of the departments that oversee the state government activities covered by the Commerce Committee as well as considering the bills assigned to the committee.

Senator Soles introduced Mr. Franklin Freeman, Senior Assistant to the Governor for Governmental Affairs, to speak to SJR 327, Confirming Joseph A. Smith, Jr., as Commissioner of Banks (see attached bill, bill explanation, and information about Mr. Smith). Mr. Freeman in turn introduced, on behalf of Governor Easley, the Governor's nominee. Mr. Smith has served as North Carolina's Commissioner of Banks since June of 2002 to complete the unexpired term of the former Banking Commissioner, and is currently being appointed for a full four-year term.

Mr. Smith introduced his staff that was present at the meeting:

- Mr. David Hansen, Deputy Commissioner
- Mr. W. Reitzel Deaton, Director of Consumer Financial Activities
- Ms. Nancy Rhue, Chief Financial Officer
- Mr. George King, former Ombudsman and new Director of the Mortgage Division
- Ms. Irene Smith, Executive Assistant

Senator Soles asked if there were any present to speak to the nomination. Mr. Paul Stock, representing the North Carolina Bankers Association, spoke strongly in favor of confirmation. Senator Shaw also spoke strongly in favor of Mr. Smith's confirmation. Senator Rand moved for a favorable report of the resolution. The motion carried unanimously.

Mr. Smith was asked to make remarks to the Committee describing the activities of the Commission and changes that have been made since he took office. Senator Soles asked for additional information about trust companies. Mr. Smith replied there are two kinds: one that deals with the public and acts like a bank, and private trust companies.

Senator Soles commented that there was not enough time to consider SB 338, Remove Sunset/Municipal Electric Service, and that it would be brought up at a later meeting.

The meeting adjourned at 11:55 a.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, March 18, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.JR. **327** Confirming Joseph A. Smith Jr./Comm'r of Banks
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE JOINT RESOLUTION 327

Sponsors: Senator Soles.

Referred to: Commerce.

March 10, 2003

A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENT OF JOSEPH A. SMITH, JR. AS COMMISSIONER OF BANKS.

Whereas, under provisions of G.S. 53-92, appointment by the Governor of the Commissioner of Banks is subject to confirmation by the General Assembly by joint resolution; and

Whereas, the term of the present Commissioner of Banks will end on March 31, 2003; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of his appointee to fill the term of Commissioner of Banks which will begin April 1, 2003, and expire March 31, 2007; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The appointment of Joseph A. Smith, Jr. as Commissioner of Banks for a term expiring March 31, 2007, is confirmed.

SECTION 2. This resolution is effective upon ratification.

SENATE BILL 327: Confirmation of Joseph A. Smith, Jr., Commissioner of Banks.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Sen. R.C. Soles
Date:	March 18, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Joint Resolution 327 confirms the appointment of Mr. Joseph A. Smith, Jr. as Commissioner of Banks for a four-year term that expires March 31, 2007. The resolution is effective upon ratification.***

CURRENT LAW: Mr. Smith was appointed by the Governor to serve as Commissioner of Banks for the unexpired term of Hal Lingerfelt that expires on March 31, 2003. That appointment was confirmed by the General Assembly in 2002. This appointment for a four-year term is subject to confirmation by the General Assembly. The Commissioner of Banks is paid $104,523 per year.

The Commissioner of Banks regulates and supervises banking activities under Chapter 53 and savings institutions activities under Chapter 54B of the North Carolina General Statutes. The primary responsibilities of this office are to insure safe and conservative management of the banks, savings and loan associations, and savings banks under its supervision taking into consideration the interest of the financial institutions' depositors, creditors, shareholders, and the public in their relations with such financial institutions. The North Carolina Banking Commission adopts rules to provide direction and supervision of the Commissioner of Banks as he enforces the rules of the Commission and the financial institution laws of North Carolina. The Banking Commission may review the actions of the Commissioner of Banks.

The Office of the Commissioner of Banks, together with the North Carolina Banking Commission, is responsible for the regulation of every state chartered bank, savings and loan association, savings bank or corporation transacting the business of banking in North Carolina, as well as registration/licensing of various financial institutions operating in North Carolina. These financial institutions include:

1. Check-cashers,
2. Consumer finance companies,
3. Mortgage bankers and mortgage brokers,
4. Money transmitters,
5. Refund anticipation lenders,
6. Bank holding companies, and
7. Reverse mortgage lenders.

Attached to this summary is a copy of the Governor's appointment letter, Mr. Smith's resume, and a letter from the State Ethics Board concerning Mr. Smith's Statement of Economic Interest.

S327-SMRU-001

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

MICHAEL F. EASLEY
GOVERNOR

March 4, 2003

The Honorable Marc Basnight
The Honorable James Black
The Honorable Richard Morgan
NC General Assembly
Raleigh, NC 27601

Dear President Pro-Tem Basnight, Speaker Black and Speaker Morgan:

Please be advised that Mr. Joseph A. Smith, Jr., will be reappointed as North Carolina Commissioner of Banks, effective April 1, 2003. As you know, Mr. Smith has served as Commissioner of Banks since June 1, 2002 when he was appointed to fill the unexpired term of Mr. Hal Lingerfelt.

As provided for in G.S. §53-92, Mr. Smith's reappointment is subject to reconfirmation by the General Assembly by joint resolution.

Enclosed are copies of Mr. Smith's resume and the most recent statement of economic interest. Please feel free to contact Sondra Davis, my Director of Boards and Commissions should you require additional information. She can be reached at (919) 715-0966.

With kindest regards, I remain

Very truly yours,

Michael F. Easley

MFE:bc

cc: The Honorable R.C. Soles, Jr.
The Honorable Walter Church, Sr.
The Honorable Edgar V. Starnes
Ms. Janet Pruitt
Ms. Denise Weeks

Joseph A. Smith, Jr.
2210 Coley Forest Place
Raleigh, NC 27607

Employment History

June 2002 - Present
Commissioner of Banks, State of North Carolina

May 2000 - May 2002
Counsel
Thacher Proffitt & Wood
Washington, DC

Financial services regulatory practice in the Washington office of a New York based law firm. Practice involved advising banks, thrift institutions and other financial services firms with regard to mergers and acquisitions, complex financing transactions and asset securitizations.

September 1991 - April 2000
Special Counsel (9/91 - 4/92)
General Counsel and Secretary
Centura Banks, Inc. And Centura Bank
[Now RBC Centura]
Rocky Mount, North Carolina

Chief legal officer of Centura during the period of time when it grew from $2.5 billion to over $10 billion in assets and extended its service offerings to securities and insurance.

September 1988 - April 1991
Counsel; Partner
Poyner & Spruill
Raleigh, North Carolina

Practice involving representation of bank and thrift clients in loan transactions, workouts and collection matters, general representation of other corporate clients and legislative representation of various corporate clients.

September 1984 - September 1988
Assistant General Counsel
Emery Air Freight Corporation
Wilton, Connecticut

General corporate practice including major financial transactions, aircraft leasing and litigation and claims management.

February 1979 - September 1984
Corporate Counsel
PepsiCo, Inc.
Purchase, NY

Corporate and securities practice for Fortune 50 company.

September 1975 - February 1979
Associate
Brown, Wood, Ivey, Mitchell & Petty
[Now Sidley Austin Brown & Wood]
New York, New York

Securities and public finance practice involving representation of the underwriters of various issues of corporate and municipal debt securities. Bond Counsel for a number of North Carolina issuers.

Education

Davidson College
A.B. (History) 1971

University of Virginia Law School
J.D. 1974

Advanced Management Program, Kenan-Flagler Business School, UNC

Professional Affiliations

Licensed to practice law in New York (1975) and North Carolina (1989)

Member of the Steering Committee, UNC Law School Center for Banking and Finance

Joseph A. Smith, Jr.

Joseph A. Smith, Jr. is the North Carolina Commissioner of Banks, having been appointed June 1, 2002, by North Carolina Governor Mike Easley to fill the unexpired term of the retiring Commissioner. Prior to his appointment, Mr. Smith was counsel in the Washington office of the New York law firm, Thacher, Proffitt & Wood, where he was a practitioner in its corporate and financial institutions practice group.

Before moving to Washington, DC, Mr. Smith served as General Counsel and Secretary of Centura Banks, Inc. and Centura Bank (now RBC Centura) in Rocky Mount, North Carolina, and engaged in the private practice of law in Raleigh.

Mr. Smith is a graduate of Davidson College and the University of Virginia Law School. He lives in Raleigh, North Carolina, is married and has two grown sons.

Publications

"The Federal Banking Agencies' Guidance on Subprime Lending: Regulation with a Divided Mind." North Carolina Banking Institute (Volume 6 April 2002)

"*Savings for the Poor: The Hidden Benefits of Electronic Banking*: A Review and Response." North Carolina Banking Institute (Volume 5 April 2001)

"Retail Delivery of Financial Services After the Gramm-Leach-Bliley Act: How Will Public Policy Shape the Financial Services Supermarket?" North Carolina Banking Institute (Volume 4 April 2000)

[With David E. Brown, Jr. and Kathryn M. Cole] "Strategic Alliances: Why, How and What to Look Out For." North Carolina Banking Institute (Volume 3 April 1999)

"The Role of Outside Counsel in the Creation of Economic Value." North Carolina Banking Institute (Volume 2 April 1998)

Other Information

Born November 9, 1949 in Charleston, WV. Attended public schools in hometown of Dunbar, WV before admission to Davidson.

Married to the former Elizabeth Marion (23 years). Two sons: Joseph III, who graduated from Johns Hopkins University in May 2002; and Matthew, a student at Cape Fear Community College in Wilmington.

Member of the Board of Trust of Saint Augustine's College, Raleigh, NC, from 1995 through 2001.

NO-CHANGE FORM ("Short Form")

to

Statement of Economic Interest

Executive Order Number One

Office Use Only
Code 807
Appt by
Date filed: 1/9/03

NORTH CAROLINA BOARD OF ETHICS

For assistance call 919-733-2780 Fax 919-733-2785

e-mail nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Mail to: Board of Ethics, 1324 Mail Service Center, Raleigh, NC 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

Executive Order Number One requires that Public Officials update their Statement of Economic Interest *each year* by **May 15**. See Sections 9 (b) & (e). New information must be reported and information no longer applicable must be deleted.

IF YOU DO **NOT** HAVE ANY CHANGES TO REPORT, please sign, date, and have this "No-Change" form notarized by a notary public. Upon completion, please return this signed, dated, and notarized page ONLY to the above address. If you do not have any material changes to report, this is the only form you need to submit.

IF YOU **DO** HAVE CHANGES TO REPORT, please make all necessary changes on a supplemental Statement of Economic Interest form. Other than your name and the name of your Board or Agency, YOU NEED ONLY ANSWER QUESTIONS WHERE YOU HAVE CHANGES TO REPORT.

Please sign, date, and have whichever form you use notarized before returning it to the Board of Ethics at the above address. AGAIN, ALL FORMS MUST BE NOTARIZED.

Name of Person Filing: Joseph A. Smith, Jr.

Name of Board on which you are serving:

or

Name of State Agency in which you are employed: Office of Commissioner of Banks

VERIFICATION OF *NO MATERIAL CHANGES*

I hereby certify that I have read Executive Order Number One and this form, and to the best of my information, knowledge and belief, there have been **no material changes** to my personal, familial, or financial situation which would require disclosure pursuant to Executive Order Number One (January 12, 2001), and I have no additional material information to disclose that was not disclosed in my previously filed Statement of Economic Interest. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

1/8/2003
Date

Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Subscribed and sworn before me this the 8th day of January, 2003.

My Commission Expires: 10/12/2005

Notary Public

807
emplee (Con) RECEIVED
BOARD OF ETHICS

Statement of Economic Interest

for Executive Order Number One

Date: 5-29-02 6-3-02 (Orig

NORTH CAROLINA BOARD OF ETHICS
For assistance call 919-733-2780 Fax 919-733-2785
e-mail nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Mail form to: Board of Ethics, 1324 Mail Service Center, Raleigh, N.C. 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

Name of Person Filing: Joseph A. Smith, Jr.
Name of Spouse: Elizabeth A. M. Smith
Home Address: 3223 Adams Court, Fairfax, VA 22030
Home Telephone: (703) 279-1193

Name of Employer: Thacher Proffitt & Wood
Your Title: 1700 Pennsylvania Ave., N.W., Suite 800
Business Address: Washington, DC 20006
Business Telephone: 202-347-8400
Business Fax: 202-626-1930
Business Activity: Title: counsel
Law Firm

Spouse's Employer and Business Activity: Flint Hill School, Oakton, VA
School

If you are filing because you are serving on or being considered for appointment to a State Board, Commission, or Council state the **name of the Board, Commission, or Council.**

Not applicable

Are you, your employer, your spouse, or spouse's employer licensed or regulated by the Board on which you are/will be serving, or have business relationships with the Board? No X If yes, please explain:

NOTE: Executive Order Number One requires you to list assets and liabilities with a value of $10,000 or more for yourself and spouse as set forth below. You are NOT required to include an estimated value of the assets and liabilities.

1. List all parcels of **real estate** located in North Carolina in which you, or your spouse, have an ownership interest valued $10,000 or more. Give street address or other description adequate to determine the location of each parcel. State the specific interest held in each identified parcel.

Contract to purchase land and building for personal residence in Raleigh, NC. Address: 2210 Coley Forest Place, Raleigh, NC 27607-3162. Deed reference: Book 3125, Page No. 0370, Wake County.

Identify real estate that is currently leased or rented to a State Government Agency, and identify the Agency. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest.

None

If any parcels are located in an area over which the Board you are serving on has regulatory authority or could otherwise be affected by Board decisions, please explain.

Not applicable.

2. Identify **personal property** sold to or bought from the State within the preceding two years and personal property currently leased or rented to the State by you or your spouse. Indicate whether the transactions are in accordance with the provisions of the Division of Purchase and Contract. If not, please explain.

None

3. List the name of each **publicly-owned company** in which the value of securities held by you or your spouse is $10,000 or more. You may attach a list from your broker.

None

4. List the name and business activity of each **non-publicly-owned company or business entity** in which the value of securities or other equity interests held by you or your spouse is $10,000 or more, including but not limited to, interests held in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations.

None

With respect to the entities listed above, should any of the entities own securities or equity interests of $10,000 or more in other companies or business entities, list the name of the company or business entity and a brief description of the business activity of each.

Not applicable

Are you, your spouse, or any of the entities listed above licensed by, regulated by, or have business relationships with the same area of State Government with which you are associated? If so, please explain.

Not applicable

5. You are required to make a good faith effort to list any individual or business entity with which you or your spouse have a financial or professional relationship provided:

(1) The nature of the relationship presents a conflict of interest or the appearance of a conflict of interest for you while performing your official duties, or

(2) Any separate financial or professional interest of such individual or business entity would present a conflict of interest or appearance of a conflict of interest for you while performing your official duties. For each individual or business entity listed, generally describe the financial or professional relationship and provide a brief explanation of why the individual or business entity has been listed.

None. Contractual relationship with Thacher Proffitt & Wood terminates May 31, 2002.

6. List all directorships on all boards on which you are serving. Please explain any situation that could appear to be

from any of the following categories of legal representation:

( ) Admiralty ( ) Taxation ( ) Decedent's estates (X) Corporation law ( ) Real property

( ) Negligence (representing plaintiffs) ( ) Negligence (representing defendants)

( ) Criminal law ( ) Labor law ( ) Insurance law (X) Administrative law (Banking)

( ) Utilities regulation or representation of regulated utilities ( ) Representation of local governments

13. If the information has not been included in previous questions, list all **non-publicly owned businesses** you have been associated with during the past five years as an employee, officer, director, partner, or owner. For each business listed, state your association, and the time period of your association. To the best of your knowledge, state whether any of the businesses listed does business with the same area of State Government with which you are associated. State the nature of business, and whether you or the business is licensed by, regulated by, receive permits, grants or other funding from the same area of State Government with which you are associated.

None

14. List all **gifts** received with a value exceeding $200 during the twelve months preceding the date of this statement from sources other than your spouse or relatives.

None

List all **gifts** received with a value exceeding $100 during the twelve months preceding the date of this statement from any source having business with or regulated by the State.

None

15. List all **bankruptcies** filed during the preceding five years by you, your spouse, or any entity in which you or your spouse has been associated financially. Provide a brief summary of the facts and circumstances regarding each listed bankruptcy.

None

16. Having read Executive Order Number One, state any problems or conflicts of interest you may have that are not fully covered in previous questions. Include an explanation of how you would propose to resolve the matter.

None

a conflict of interest with your official duties.

None

Membership on Executive Committee and Steering Committee of the UNC Law School Center for Banking and Finance, and the Banking Institute have been terminated.

7. Are you an **elected official** at the local government level? If so, please explain.

No

8. If you, your spouse, or your dependent children are the **beneficiary of a trust** created, established or controlled by you, list the name and address of the trustee and a description of the trust. To the extent such information is available to you, include a list of businesses in which the trust has an ownership interest of $10,000 or more.

Not applicable

9. List each **asset** with a valuation of $10,000 or more, held by you or your spouse, which have not been listed elsewhere. Some examples are mutual funds, certificates of deposit, bank accounts and retirement accounts. It is not necessary to list furniture, jewelry, automobiles, and other personal effects.

Bank accounts with Citibank, FSB, Suntrust and Wachovia Bank, NA
Retirement accounts with Vanguard Group, TIAA-CREF and BB&T Retirement Services

10. List each **liability** with a valuation of $10,000 or more for you and your spouse. Give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, and automobile loans.

Home mortgage on VA residence, SBA as mortgagee. Application for mortgage on Raleigh residence through Wachovia Bank, NA

11. List each **source of income** for you and your spouse where $10,000 or more was received. For each source listed, describe the type of income received, and state the name of the business entity or individual from which the income was received. Some examples of income are salary or wages, professional fees, honoraria, interest, stock dividends, capital gains, and business profits.

Sources for Person Filing:

Thacher Proffitt & Wood contractual compensation.

Sources for Spouse: Flint Hill School salary.

Please explain if any of the sources of income are regulated by, receive permits from, or otherwise are connected with the same area of State Government with which you are connected.

Not applicable

12. If you are a **practicing attorney**, check each category of legal representation in which you and/or the law firm with which you are associated has, during any single year of the past five years, earned legal fees of $10,000 or more

VERIFICATION

I hereby do certify that I have read this Statement of Economic Interest, and all attachments and to the best of my knowledge and belief it is true, correct and complete. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein. I acknowledge that I am under a continuing obligation to avoid conflicts of interest and the appearance of conflicts of interest. If I believe a potential for conflict exists, I will inquire of the Board of Ethics as to that potential conflict.

May 29 2002
Date

Signature of Person Filing

~~STATE OF NORTH CAROLINA~~ Commonwealth of Virginia
COUNTY OF Arlington

Subscribed and sworn to before me this the 29th day of May, 2002.

My Commission Expires: March 31, 2005

Dana K. Blumenthal
Signature of Notary Public

State of North Carolina

OFFICE OF THE COMMISSIONER OF BANKS

MICHAEL F. EASLEY
GOVERNOR

March 14, 2003

JOSEPH A. SMITH, JR.
COMMISSIONER OF BANKS

Senator Robert C. Soles, Jr.
Legislative Building, Room 2022
Raleigh, NC 27601-2808

Dear Senator Soles:

Thank you very much for the opportunity of appearing before the Senate Commerce Committee on March 18, 2003, to discuss the activities of the Office of the North Carolina Commissioner of Banks (hereinafter, sometimes, "OCOB"). In that regard, I enclose a summary sheet regarding such activities for your use and the use of the members of the Committee. In addition, I would like to address pertinent issues relating to our two major activities: supervision and regulation of banking organizations and regulation of the residential mortgage lending industry.

Supervision and Regulation of Banking Organizations.

As directed by the General Assembly (Session Laws 2001-193), the Office of Commissioner of Banks and North Carolina Savings Institutions Division have been consolidated and the North Carolina Banking Commission expanded to include members who were previously members of the Savings Institutions Commission. In implementing this restructuring, my colleagues and I have determined that the appropriate distinctions between banking institutions today relate less to the charter under which such institutions are organized (e.g., commercial bank, savings bank, savings and loan association) than to the scope of operations and risk profiles of such institutions. To be more specific:

- Banking organizations that we classify as "large complex institutions" comprise roughly twenty percent of the firms we supervise, but account for over eighty percent of the total assets of state banking organizations. As a rule, these institutions operate in more than one jurisdiction and have relatively broad product lines. The risk profiles of such institutions relate to issues of corporate control and the ability to maintain administrative infrastructures that can manage their growth and complexity.

- Banking organizations that we classify as "community institutions" comprise roughly eighty percent of supervised firms, but account for less than twenty

LOCATION: 316 W. EDENTON STREET, RALEIGH, NC 27603
MAILING ADDRESS: 4309 MAIL SERVICE CENTER, RALEIGH, NC 27699-4309
(919) 733-3016 • FAX (919) 733-6918 • INTERNET: WWW.BANKING.STATE.NC.US
AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

- percent of total assets. These institutions are, in many ways, the heart and soul of Tar Heel banking and provide numerous public benefits to our citizens. The risk profiles of such institutions generally relate to the limited size of the markets they serve and, in some instances, to relatively short operating histories.

To appropriately supervise these different kinds of banking organizations, we have divided our examiners into a complex institutions group with one team of examiners and a community institutions group with three teams of examiners. State-chartered trust companies are supervised by the complex institutions group. Our restructuring efforts are works in progress, but we believe they will make OCOB more efficient and effective.

Mortgage Lending Act.

The General Assembly adopted the Mortgage Lending Act (Session Laws 2001-393, hereinafter, the "MLA") in 2001 with an effective date of July 1, 2002, and amended the MLA in 2002 (Session Laws 2002-169). As originally enacted, the MLA required that mortgage bankers, brokers and loan officers not affiliated with certain exempt entities (generally, regulated financial institutions) be licensed by OCOB and gave OCOB enhanced enforcement powers to police the retail mortgage market. The 2002 amendment to MLA, among other things, allowed for issuance of limited licenses to representatives of certain finance and insurance firms.

Since the effective date of the MLA, OCOB has received over 12,000 applications for licensure and has processed over 10,000 of such applications. Most, if not all, of the applications yet to be processed relate to limited or exclusive brokerage arrangements authorized by the 2002 amendments to the MLA.

Approximately 500 applications have been denied to date for a variety of reasons, generally prior criminal record or lack of financial responsibility (e.g., liens for unpaid taxes, unsatisfied judgments). Of the 500 denied applicants: (i) 133 have failed to perfect their rights of appeal from the denial; (ii) 114 have been resolved through hearings or consent agreements; (iii) 59 have perfected appeals that are in process; and (iv) 194 remain in process. Appeals hearings by the Commissioner of Banks have been scheduled for the next several months and will continue until all appeals have been heard.

Because of the volume of work generated by the licensing process and the likely volume of work that will result from examination and investigative activities in the future, the Mortgage Division has been established as a separate division of OCOB. George King, formerly OCOB's Ombudsman, will serve as the director of this new division.

Conclusion

The matters discussed above are the most significant of a large number of changes that OCOB has made during the last six months to deal effectively with the challenges that confront us. I believe we have a solid foundation of personnel, assets and know-how to fulfill the mandates given to us by the General Assembly. My colleagues and I look forward to working with the General Assembly in the future for the betterment of North Carolina and its citizens.

Very truly yours,

Joseph A. Smith, Jr.
Commissioner of Banks

Enclosure

Commissioner of Banks
Fact Sheet

Banks, Savings Banks, and Savings & Loan Associations

The North Carolina Commissioner of Banks regulates banks, savings banks, and savings & loan associations under N.C.G.S. 53 *et seq.*, 54B *et seq.*, and [illegible] *seq.* The primary purpose of these statutes is to ensure the safe conduct of banking business within the state, to maintain the public's confidence in the financial institutions, and to protect the institutions' depositors, debtors, creditors, and shareholders.

As of 12/31/02 we regulated:

65	Commercial Banks 1,911	branches
20	Savings Banks 61	branches
1	Savings and Loan Association	
4	State Trust Companies	
2	Trust Representative Offices registered	
30	Loan Production Offices registered	

As of 12/31/02 86 state-chartered financial institutions reported:

Total Deposits	$77,165,093,000
Total Assets	$117,577,944,000

Bank Holding Companies and Savings Bank Holding Companies

The Bank Holding Company Act of 1984 (N.C.G.S. 53-225 *et seq.*) requires certain bank holding companies to register with the Commissioner of Banks. Companies that control NC federally or State-chartered banks, or companies that control any non-bank subsidiary having offices located in the State are subject to the registration requirements.

As of 12/31/02 we had:

59	Bank Holding Companies registered
44	Bank Holding Companies registered/regulated
6	Savings Bank Holding Companies registered/regulated

Consumer Finance

The North Carolina Consumer Finance Act (N.C.G.S. 53-164 *et seq.*) authorizes the Commissioner of Banks to license and supervise small loan companies that make direct consumer loans of $10,000 or less and charge rates in excess of those permitted by Chapter 24. These lenders may choose to make loans as a General Lender (N.C.G.S. 53-173) or as an Optional Rate Lender (N.C.G.S. 53-176).

As of 12/31/02 we had licensed:

42	General Lenders (lend $3,000 or less)
541	Optional Rate Lenders (lend $10,000 or less)
583	**Total Offices**

Refund Anticipation Loans

The Refund Anticipation Loan Act requires facilitators who make tax refund loans to register with the Commissioner of Banks.

As of 12/31/02 we had registered:

583 Refund Anticipation Lenders 1,227 Offices

Mortgage Lenders, Brokers, and Loan Officers

The North Carolina Commissioner of Banks licenses all mortgage lenders, brokers and loan officers under N.C.G.S. 53-243.01 *et seq.*, unless exempt by statute. This statute became effective 7/01/2002, replacing the mortgage registration laws under Article 19 of Chapter 53. Registrants under the old law will receive "grandfathered" licenses during the first year.

As of 12/31/02 we had:

293	Mortgage Lenders with 505 branches
432	Mortgage Brokers with 232 branches
7,694	Loan Officers

As of 12/31/02 licensing applications were still being processed.

Money Transmitters

The Money Transmitters Act (N.C.G.S. 53-192 *et seq.*) provides that no one can sell or issue checks, drafts, money orders, or other instruments for the payment or transmission of money unless licensed by the Commissioner of Banks

As of 12/31/02 we had:

47 Money Transmitter Licensees

Reverse Mortgages

The Reverse Mortgage Act (N.C.G.S. 53-255 *et seq.*) authorizes the Commissioner of Banks to approve reverse mortgage lenders. Even though banks, savings institutions, and credit unions are exempt and do not have to obtain the Commissioner's approval, nevertheless they must notify him of their intent to offer reverse mortgages. Reverse mortgages are available to homeowners over 62. They provide monthly loan advances which are repaid upon death or the sale of the house.

As of 12/31/02 we had approved:

4	Reverse Mortgage Lenders
1	Exempt Lender

Trust Licenses

Pursuant to N.C.G.S. 53-159.1, *et seq.*, banks wishing to act in a fiduciary capacity must make application to the Commissioner of Banks for a license, and renew the license annually thereafter. Licenses are granted or renewed upon a determination of applicant's solvency and receipt of a fee.

As of 12/31/02 we had:

29 Trust Licensees

[illegible]k-Cashing Businesses

[illegible]r N.C.G.S. 53-275 *et seq.*, persons or other entities providing check-cashing services for a fee, service charge, or other consideration must be licensed by the Commissioner of Banks. The law sets maximum fees for the check-cashing service.

As of 12/31/02 we had:

156 Licensees 1,212 Locations

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 338*

Short Title:	Remove Sunset/Municipal Electric Service.	(Public)
Sponsors:	Senators Queen, Tillman; Albertson, Allran, Apodaca, Ballantine, Berger, Bingham, Blake, Brock, Carpenter, Clodfelter, Dorsett, Forrester, Foxx, Garrou, Garwood, Gulley, Hagan, Hargett, Hartsell, Holloman, Hoyle, Jenkins, Kinnaird, Lucas, Moore, Purcell, Rand, Reeves, Shaw, Shubert, Sloan, Smith, Stevens, Swindell, Thomas, Webster, and Weinstein.	
Referred to:	Commerce.	

March 10, 2003

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET ON THE LAW PROVIDING THAT CERTAIN SECONDARY SUPPLIERS OF ELECTRIC SERVICE MAY FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH WRITTEN CONSENT FROM THE CITY, ALLOWING THE MEMBERS OF AN ELECTRIC MEMBERSHIP CORPORATION TO VOTE BY PROXY ON DECISIONS TO ENCUMBER CORPORATE PROPERTY OR TO DISSOLVE THE CORPORATION, AND MAKING TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL ELECTRIC SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 6 of Chapter 346 of the 1997 Session Laws, as amended by S.L. 1999-111, reads as rewritten:

"**Section 6.** This act is effective when it becomes law and applies only to annexations or incorporations that occur on or after the effective date. ~~This act expires on December 31, 2003.~~"

SECTION 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 18, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
KATIE DEREN	GOODYEAR STATESVILLE PLANT
Mike Carey	NC Chamber
Bennie Harrington	UNC-Pembroke
Rob Bacon	Capitol Days
Roger Bone	Bone and Assoc - Rep Lada
[illegible]	NCAEC
Ron McKinney	Progress Va. Alley
Al Ripley	NC Justice Ctr
Katherine Davis	Electricities of NC
Katherine Joyce	Electric Cooperatives
Lou Ann Harris	L.A Harris & Assoc Inc

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 18, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Kaylor	Kaylor Law Firm
Bill McAulay	PSNC Energy
Taylor Frances	Sen. Purcell
[illegible]	Progress Energy
[illegible]	Bank of America
John Bowdish	Self
Ken McHan	Alley Associates
John Goodman	Mercer Assoc.
Mark Burtschi	The Goodyear Tire & Rubber Company
David Barnes	Poyner Spruill LLP
Trinna Ware	Goodyear - Spring Hope Plant

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 18, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mary Munchette	Poyner & Spruill
Bill Hale	Jordan Price Law Firm
Dan Green	Four County EMC
Jimmy Smith	Four County EMC
Lisa Perry	Duke Energy
Jim Konkler	Kelly - Springfield Tire Co
Richard Adams	" " "
Jo B. Andrews	Goodyear - Asheboro
Grant McKinnon	Kelly Springfield Tire Co.
Adam Sadlowski	Goodyear - Asheboro
Mary Nicholson	Goodyear — Spring Hope

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 18, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Hanson	316 W. Edenton St., Raleigh N.C. Office of Commissioner of Banks
Reitzel Denton	NC office of Commissioner of Banks
Nancy Rhue	NC Office of Commissioner of Banks
George King	Office of the Commissioner of Banks
Irene Smith	" " "
Paul Stahl	NC Bankers Assn.
Ken Howell	Governor's office

AGENDA

SENATE COMMERCE COMMITTEE
Tuesday, March 25, 2003 at 11:00 a.m.
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Presentations

- Ms. Jo Anne Sanford, Chair, NC Utilities Commission
- Mr. Robert Gruber, Executive Director, Public Staff, NC Utilities Commission

III. Bill

- SB338 Remove Sunset/Municipal Electric Service Sen. Queen

IV. Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, March 25, 2003 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, March 25, 2003, in Room 1027 of the Legislative Building. Sixteen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles opened the meeting by announcing the committee would consider Senate Bill 338, Remove Sunset/Municipal Electric Service, sponsored by Senator Joe Sam Queen. Senator Queen was introduced to explain the bill. Senator Rucho moved for a favorable report. The motion carried.

Senator Soles introduced Ms. Jo Anne Sanford, Chair, North Carolina Utilities Commission, to make a presentation about North Carolina's public utility infrastructure and regulatory climate (see attached).

Senator Soles then introduced Mr. Robert Gruber, Executive Director of the Public Staff of the North Carolina Utilities Commission. Mr. Gruber explained that the 85-employee, nine division agency is involved in all utility industries. One of their large responsibilities is to deal with consumer complaints. They receive about 60-70 per day. The public staff assists the Commission by negotiating settlements before the cases go to the Commission, and the General Assembly by addressing utilities concerns.

Senator Soles introduced the members of the Utilities Commission and asked each to say a few words:

- Mr. J. Richard Conder
- Mr. Robert V. Owens, Jr.
- Mr. Sam J. Ervin, IV
- Ms. Lorinzo L. Joyner
- Mr. James Y. Kerr, II
- Mr. Michael S. Wilkins

The meeting adjourned at 11:55 a.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, March 25, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **338** Remove Sunset/Municipal Electric Service.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

SB 338:
Remove Sunset/Municipal Electric Service

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Sen. Queen
Date:	March 25, 2003	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

SUMMARY: SB 338 permanently removes a sunset date of December 31, 2003 that applies to S.L. 1997-336, as amended by S.L. 1999-111.

CURRENT LAW: The provisions contained in S.L. 1997-336 will expire on December 31, 2003. A copy of S.L. 1997-336 is attached.

BILL ANALYSIS: S.L. 1997-346 allows secondary suppliers of electricity (suppliers other than the city or the entity holding a franchise from the city) to supply electricity in newly annexed municipal territory with the agreement of the city. The act also made changes to Chapter 117 of the General Statutes, which applies to electric and telephone membership corporations. It allows voting by proxy where the issue involves sale or encumbrance of co-op property, or the dissolution of an electric cooperative. Prior to the passage of S.L. 1997-346, only votes cast in person could be counted.

BACKGROUND: S.L. 1997-346 originally was to sunset at sine die adjournment of the 1999 General Assembly. S.L. 1999-111 extended the expiration date to December 31, 2003. This bill makes the provisions permanent.

The act is effective when it becomes law.

take place at an election held on a date set by the Jackson County Board of Elections, but no later than July 1, 1998. Initial terms shall expire at the time provided by general law as if the election had taken place at the general election on the Tuesday after the first Monday in November 1997.

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 1997.

Became law on the date it was ratified.

S.B. 848

CHAPTER 346

AN ACT TO PROVIDE THAT CERTAIN SECONDARY SUPPLIERS OF ELECTRIC SERVICE MAY FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH WRITTEN CONSENT FROM THE CITY, TO ALLOW THE BOARD OF AN ELECTRIC MEMBERSHIP CORPORATION TO VOTE BY PROXY ON DECISIONS TO ENCUMBER CORPORATE PROPERTY OR TO DISSOLVE THE CORPORATION, AND TO MAKE TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL ELECTRIC SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-331 reads as rewritten:

"*§ 160A-331. Definitions.*

Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

(1) 'Assigned area' means any portion of an area annexed to or incorporated into a city which, on or before the effective date of annexation or incorporation, had been assigned by the North Carolina Utilities Commission to a specific electric supplier pursuant to G.S. 62-110.2.

(1a) 'Assigned supplier' means a person, firm, or corporation to which the North Carolina Utilities Commission had assigned a specific area for service as an electric supplier pursuant to G.S. 62-110.2, which area, in whole or in part, is subsequently annexed to or incorporated into a city.

~~(1)~~ (1b) The 'determination date' is

a. April 20, 1965, with respect to areas within the corporate limits of any city as of April 20, 1965;

b. The effective date of annexation with respect to areas annexed to any city after April 20, 1965;

c. The date a primary supplier comes into being with respect to any city first incorporated after April 20, 1965.

(2) 'Line' means any conductor located inside the city for distributing or transmitting electricity, other than

a. For overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such premises, and

b. For underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.

(3) 'Premises' means the building, structure, or facility to which electricity is being or is to be furnished. Two or more buildings, structures, or facilities that are located on one tract or contiguous tracts of land and are used by one electric consumer for commercial, industrial, institutional, or governmental purposes, shall together constitute one 'premises,' except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one 'premises' if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.

(4) 'Primary supplier' means a city that owns and maintains its own electric system, or a person, firm, or corporation that furnishes electric service within a city pursuant to a franchise granted by, or contract with, a city, or that, having furnished service pursuant to a franchise or contract, is continuing to furnish service within a city after the expiration of the franchise or contract.

(5) 'Secondary supplier' means a person, firm, or corporation that furnishes electricity at retail to one or more consumers other than itself within the limits of a city but is not a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation."

Section 2. G.S. 160A-332(a) reads as rewritten:

"(a) The suppliers of electric service inside the corporate limits of any city in which a secondary supplier was furnishing electric service on the determination date (as defined in G.S. 160A-331(1)) shall have rights and be subject to restrictions as follows:

(1) The secondary supplier shall have the right to serve all premises being served by it, or to which any of its facilities are attached, on the determination date.

(2) The secondary supplier shall have the right, subject to subdivision (3) of this section, to serve all premises initially requiring electric service after the determination date which are located wholly within 300 feet of its lines and located wholly more than 300 feet from the lines of the primary supplier, as such suppliers' lines existed on the determination date.

(3) Any premises initially requiring electric service after the determination date which are located wholly within 300 feet of a secondary supplier's lines and wholly within 300 feet of another secondary supplier's lines, but wholly more than 300 feet from the primary supplier's lines, as the lines of all suppliers existed on the determination date, may be served by the secondary supplier which the consumer chooses, and no other supplier shall thereafter furnish electric service to such premises, except with the written consent of the supplier then serving the premises.

(4) A primary supplier shall not furnish electric service to any premises which a secondary supplier has the right to serve as set forth in subdivisions (1), (2), ~~and (3)~~ (3), and (6a) of this section, except with the written consent of the secondary supplier.

(5) Any premises initially requiring electric service after the determination date which are located wholly or partially within 300 feet of the primary supplier's lines and are located wholly or partially within 300 feet of the secondary supplier's lines, as such suppliers' lines existed on the determination date, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.

(6) Any premises initially requiring electric service after the determination date, which are located only partially within 300 feet of the secondary supplier's lines and are located wholly more than 300 feet from the primary supplier's lines, as such supplier's lines existed on the determination date, may be served either by the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.

(6a) Notwithstanding any other provision of law, a secondary supplier, upon obtaining the prior written consent of the city, shall be the exclusive provider of electric service within (i) any assigned area for which that secondary supplier had been assigned supplier prior to the determination date; or (ii) any area previously unassigned by the North Carolina Utilities Commission pursuant to G.S. 62-110.2. However, any rights of other electric suppliers existing under G.S. 62-110.2 prior to the determination date to provide service shall continue to exist without impairment in the areas described in (i) and (ii) above.

(7) Except as provided in subdivisions (1), (2), (3), (5), ~~and (6)~~ (6), and (6a) of this section, a secondary supplier shall not furnish

electric service within the corporate limits of any city unless it first obtains the written consent of the city and the primary supplier."

Section 3. G.S. 117-10.2 reads as rewritten:

"§ *117-10.2. Restriction on municipal service.*

~~No~~ Except as otherwise provided in this section, no electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of G.S. 117-10.1, or as permitted under ~~G.S. 160-511, 160-512, and 160-513; provided, that an~~ G.S. 160A-331, 160A-332, and 160A-333. An electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing."

Section 4. G.S. 117-20 reads as rewritten:

"§ *117-20. Encumbrance, sale, etc., of property.*

No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property which lie within the limits of an incorporated city or town, or which shall represent not in excess of ten percent (10%) of the total value of the corporation's assets, or which in the judgment of the board are not necessary or useful in operating the corporation) unless

(1) Authorized so to do by the votes cast in person or by proxy by at least two-thirds of its total membership, ~~without proxies,~~ and

(2) The consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained.

Notwithstanding the foregoing provisions of this section, the members of such a corporation may, by the affirmative majority of the votes cast in person or by proxy at any meeting of the members, delegate to the board of directors the power and authority (i) to borrow moneys from any source and in such amounts as the board may from time to time determine, (ii) to mortgage or otherwise pledge or encumber any or all of the corporation's property or assets as security therefor, and (iii) with respect to Electric Membership Corporations only, to sell and lease back any of the corporation's property or assets."

Section 5. G.S. 117-24 reads as rewritten:

"§ *117-24. Dissolution.*

Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed 'Certificate of Dissolution of .....' (the blank space being filled in with the name of the corporation) and shall state:

(1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.

(2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as

herein provided, the dates on which the certificates of incorporation of the original corporations were filed.

(3) That the corporation elects to dissolve.

(4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by at least two-thirds of its total ~~membership, without proxies.~~ membership.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed among the members in such manner as is provided for in the corporation's charter or bylaws, and the charter or bylaws may provide for distributions to persons who were members in one or more prior years."

Section 6. This act is effective when it becomes law and applies only to annexations or incorporations that occur on or after the effective date. This act expires on the date of the adjournment sine die of the 1999 General Assembly.

In the General Assembly read three times and ratified this the 29th day of July, 1997.

Became law upon approval of the Governor at 4:05 a.m. on the 31st day of July, 1997.

S.B. 463

CHAPTER 347

AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1997, AND TO EXTEND EXPIRING PROVISIONS OF LAW.

The General Assembly of North Carolina enacts:

FUNDS SHALL NOT REVERT

Section 1. Section 5 of S.L. 1997-256 reads as rewritten:

"Section 5. If the provisions of Senate Bill 352, 3rd edition, Senate Bill 352, 5th edition, or both, direct that funds shall not revert, the funds shall not revert on June 30, 1997. Unless these funds are encumbered on or before June 30, 1997, these funds shall not be expended after June 30, 1997, except as provided by a statute that becomes effective after June 30, 1997. If no such statute is enacted prior to ~~August 1, 1997,~~ August 15, 1997, these funds shall revert to the appropriate fund on that date."

North Carolina's Public Utility Infrastructure & Regulatory Climate

Senate Commerce Committee

March 25, 2003

Who We Are

NORTH CAROLINA UTILITIES COMMISSION
Dobbs Building, 430 North Salisbury Street 27603-5918
4325 Mail Service Center 27699-4325
Phone: 919/733-4249 Fax 919/733-7300
www.ncuc.net

Commissioners

J. Richard Conder
Robert V. Owens, Jr.
Sam J. Ervin, IV
Lorinzo L. Joyner
James Y. Kerr, II
Michael S. Wilkins
Jo Anne Sanford, Chair

Regulation of Public Utilities

- Purpose: protect interests of public in adequate service at reasonable rates.
- Traditional regulatory bargain: utilities exchange benefit of monopoly franchised service territory for obligation to provide adequate service at reasonable rates.
- Commission's regulatory obligation: to be fair and reasonable to public utilities and their customers.
- Commission's regulatory tools:
  - certification of new facilities
  - rate establishment or review &
  - service quality oversight
- Recent trends: certain utility services have been fully or partially deregulated, substantially changing the Commission's responsibility for determining rates and service quality standards.

History of NC Utilities Commission

- Oldest regulatory body in state government: evolved from Railroad Commission (1891) to Corporation Commission (1899) to Utilities Commission (1933)
- History of significant legislative grants of, or limitation on, regulatory authority:
  - Railroad – 1891
  - Telephone – 1893
  - Electric, Gas & Water – 1913
  - Wastewater – 1917
  - Housing – 1935
  - Hospitals – 1943
  - Buses/Brokers – 1949
  - Motor Carriers & Ferries – 1963
  - Electric Generation – 1965
  - Electric Membership Cooperatives – 1965
  - Payphone Service Providers – 1985
  - Long Distance Telephone Competition – 1985
  - Shared Tenant Service – 1987
  - Local Telephone Competition – 1995
  - Water Resale – 1996

NCUC Organization

- Administrative agency of General Assembly; legislative oversight by House Public Utilities Committee, Senate Commerce Committee, and Joint Legislative Utility Review Committee
- Seven members: appointed by Governor, subject to confirmation by General Assembly, serving staggered, eight-year terms *(G.S. 62-10)*
- Chair: appointed by Governor, 4-year term, organizes Commission's work. *Ex officio* member of Tax Review Board, Energy Policy Council, Agency for Public Telecommunications Board and Geographic Information Services Board. Membership responsibilities currently shared among commissioners. *(G.S. 62-12, 13)*

NCUC Organization *cont.*

- Commissioners subject to standards of judicial conduct and prohibited by law from engaging in any other employment, business or profession while in office *(G.S. 62-10(i))*
- NCUC employs 63 people, organized among 3 divisions:
  - Administrative, Operations and Fiscal Management
- Annual budget: $5,766,269 (authorized, 2002)
  - NCUC budget: $5,367,484
  - Gas Pipeline Safety budget: $398,785
  - Gas Pipeline Safety is housed in Commission, partial federal reimbursement
  - NCUC is fee-funded agency, supported by regulatory fee percentage established by General Assembly annually and applied to utility jurisdictional revenues *(G.S. 62-302)*

NCUC's Responsibilities & Procedures

- Calendar year 2002:
  - 1,058 formal proceedings instituted before NCUC
  - 112 hearings in contested cases
  - 9,990 filings in Chief Clerk's office
  - 2,308 orders issued
  - Current docket = 535 items
- Appeals from general rate case decisions to NC Supreme Court; all others to NC Court of Appeals (absent federal jurisdiction)
- NCUC participates in proceedings before federal courts and regulatory agencies *(G.S. 62-48)*

NCUC's Responsibilities & Procedures *cont.*

- Publication requirements:
  - Annual reports to Governor include copies of general orders, regulations, comparative statistical data, rate comparisons, report of pending matters & digest of principal decisions
  - Final decisions on merits in formal proceedings
- Limited jurisdiction over municipalities and cooperatives

Certified Utilities

(AS OF 3/04/03)

UTILITY	QTY
BUS / BROKER	36
ELECTRIC	5
ELECTRIC COOPERATIVES	32
ELECTRIC MERCHANT PLANTS	10
FERRIES	14
GAS	7
MOTOR CARRIERS OF HOUSEHOLD GOODS	198
SMALL POWER	76
TELEPHONE:	
▪ COMPETITIVE LOCAL PROVIDERS	197
▪ INCUMBENT LOCAL EXCHANGE	16
▪ LONG DISTANCE CARRIERS	430
▪ PAYPHONE PROVIDERS	304
▪ SHARED TENANT SERVICES	23
WATER RESALE	150
WATER / WASTEWATER	219
TOTAL	**1717**

Industry Revenue Profile

- FY2002 Jurisdictional Revenues: $10,038,765,864
  - Electric $5,771,618,438
  - Telecommunications $3,198,123,588*
  - Natural Gas $978,038,778
  - Water and Wastewater $59,710,091**
  - Transportation $31,274,969***

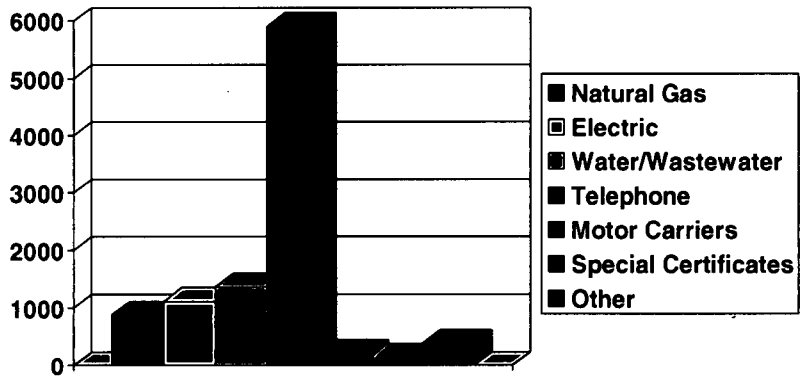
Filings & Orders by Industry Group

(Calendar Year 2002)

	Filings	Orders
▪ Electric	1,114	260
▪ Telephone	5,906	977
▪ Natural Gas	882	171
▪ Water/Wastewater	1,366	539
▪ Motor Carriers	211	137
▪ Special Certificates	134	144
▪ Other	377	80
▪ Total	9,990	2,308

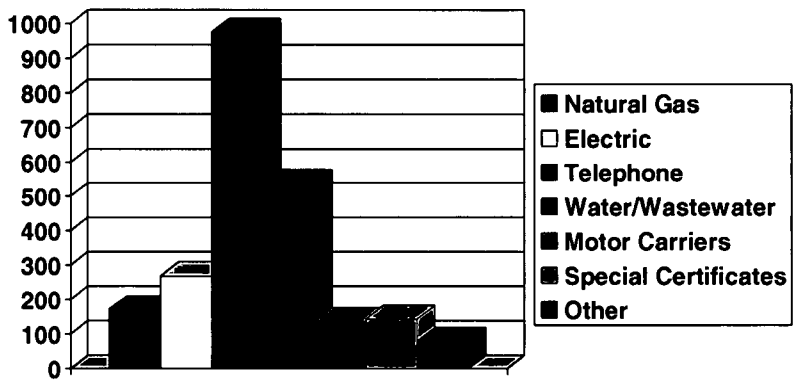
Filings by Industry Group

(Calendar Year 2002)



Orders by Industry Group

(Calendar Year 2002)



Industry Specific Overview

- I. Electric Industry
- II. Natural Gas Industry
- III. Telecommunications Industry
- IV. Transportation Industry
- V. Water and Wastewater Industry
- VI. Selected Financial and Operational Data

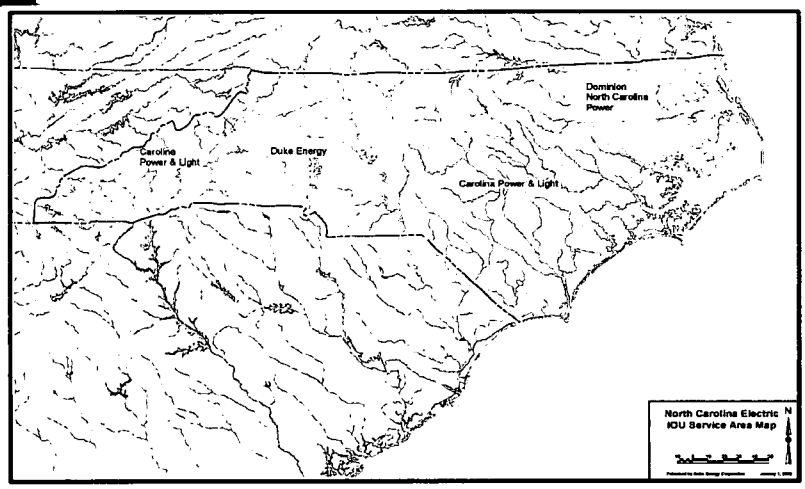
I Electric
Basic Facts: Regulated Electric Utilities

- 3 Investor-Owned Utilities (IOUs)
  - Duke Energy, through Duke Power and Nantahala Power & Light - 1,669,000 customers in Piedmont and Western North Carolina
  - Progress Energy Carolinas - 1,132,000 customers in Eastern and Western North Carolina
  - North Carolina Power - 115,000 customers in Northeastern North Carolina
- 2 University-Owned Utilities
  - New River Light and Power, Boone
  - Western Carolina University, Cullowhee

Basic Facts:
EMC and Municipal-Owned

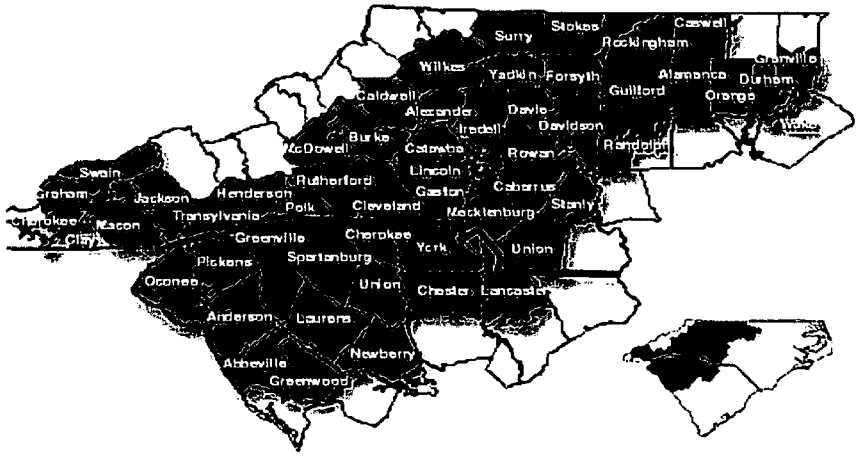
- 32 Electric Membership Corporations (EMCs) - 860,000 customers
- 71 Municipal-owned electric distribution systems - 500,000 customers
- Limited NCUC jurisdiction over EMCs and Munis:
  - Service complaint jurisdiction over EMCs *(G.S. 62-42)*
  - Monitor subsidiary business activities of EMCs to prevent subsidization by electric customers *(G.S. 117-18.1)*
  - EMC territorial assignment issues *(G.S. 62-110.2)*
  - Certification authority for construction of electric generating facilities *(G.S. 62-110.1)*
  - Certification authority for construction of electric transmission lines of 161+ KV *(G.S. 62-101)*
  - Safety jurisdiction over gas pipeline facilities operated by municipalities and similar entities *(G.S. 62-50)*

North Carolina Electric IOU Service Area



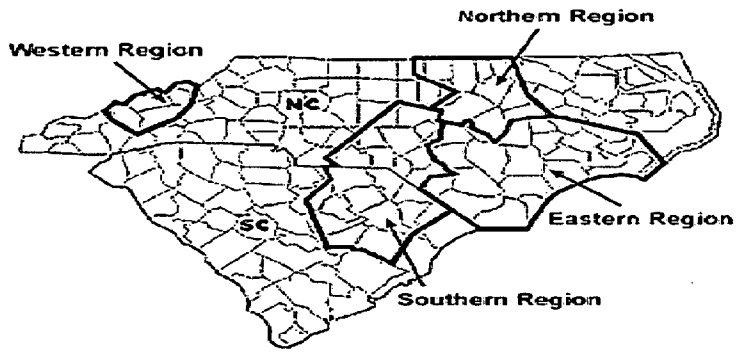
17

Duke Power Service Area

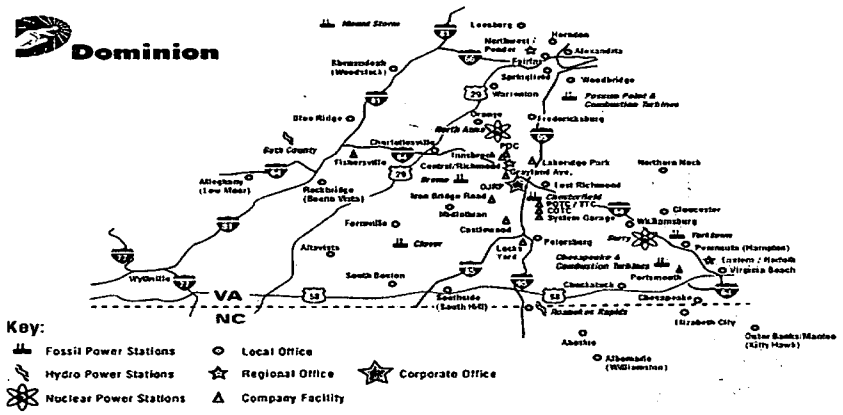


18

Progress Energy NC & SC Service Area



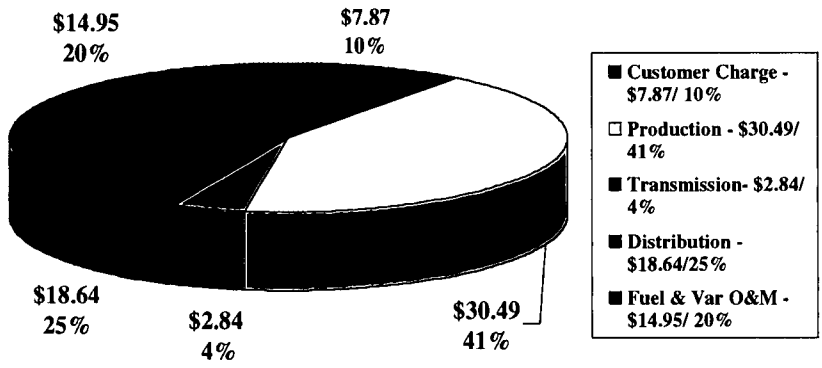
NC Power Service Area



Duke Power

Typical Residential 1,000 kWh Monthly Bill (1/1/03)

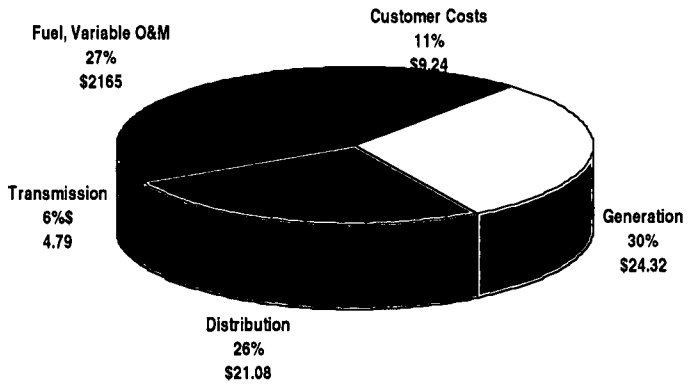
Total: $74.80



Progress Energy

Typical Residential 1,000 kWh Monthly Bill (1/1/03)

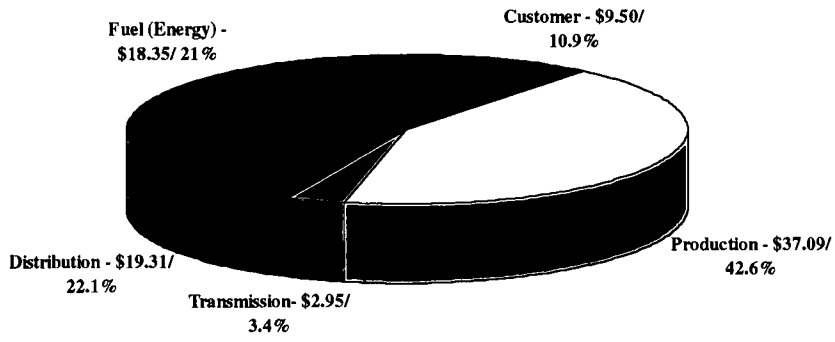
Total $81.08



North Carolina Power

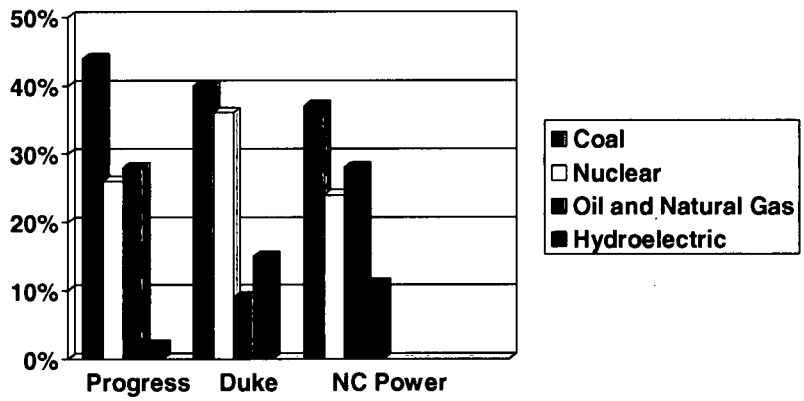
Typical Residential 1,000 kWh Monthly Bill

Total: $87.20



Note: Bill shown is weighted average of summer monthly bill and base monthly bill. Bill includes gross receipts tax but excludes any other state or local taxes.

Generating Capacity by Fuel Type



Projected Reserve Margins 2002-2012

Company	Reserve Margins
Progress	12.4 – 15.1%
Duke	17.0 – 19.3%
NC Power	12.5 – 14.3%

Basic Facts:
Fuel Mix Shift - Pros and Cons to Natural Gas

Pros	Cons
•Domestic fuel source – decreased dependence on foreign fuel resources	•Reduced fuel diversity- increased dependence on one primary fuel
•Lower capital costs	•Same trend across the country – growing demand
•More environmentally friendly, thus lower compliance costs than displaced fuel (coal, oil)	•Higher incremental production costs than coal
•Transportable and storable	•Supply unknown & limited storage (presently)
	•More susceptible to price volatility

Retail Electric Competition

- General Assembly decides whether electricity markets will be competitive
- In 1997, General Assembly formed Study Commission on the Future of Electric Service in NC to examine this issue
- In May 2000, the Study Commission adopted a tentative schedule for implementing retail competition by 2006
- National move towards retail competition has slowed dramatically---some states have retrenched from earlier aggressive positions

II Natural Gas
Basic Facts: Industry Structure

- Three parts of natural gas industry
  - Exploration and production (E&P)
  - Interstate transmission
  - Local distribution (LDCs)
- E&P companies not price-regulated
- Interstate pipeline rates fixed by FERC
- LDCs regulated by state commissions

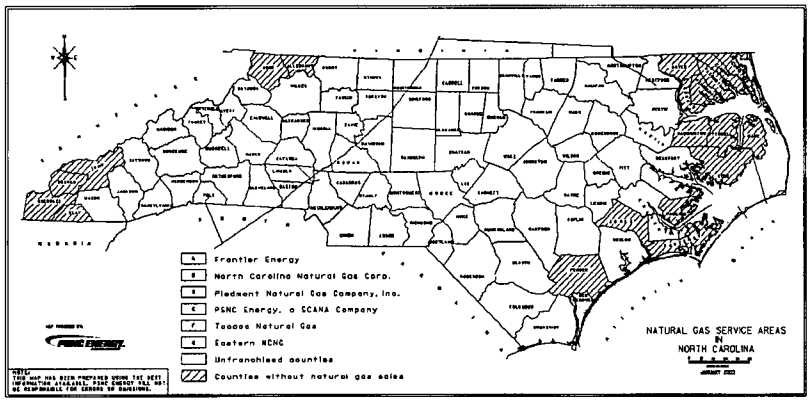
Basic Facts: Natural Gas Utilities

- Six Local Distribution Companies (LDCs)
  - Piedmont Natural Gas Company, Inc.
  - Public Service Company of N.C., Inc.
  - North Carolina Natural Gas Corp.
  - Frontier Energy, LLC
  - Toccoa Natural Gas
  - Eastern N.C. Natural Gas Company
- One Intrastate Gas Pipeline
  - Cardinal Pipeline Company, LLC
- Eight Municipal Gas Systems (not regulated by NCUC)
- Transco is single, major interstate pipeline
- Legislatively mandated, recent rapid expansion into unserved areas

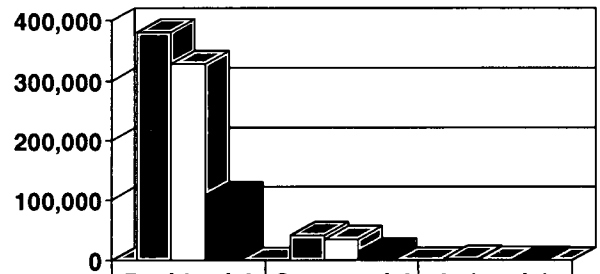
Basic Facts: Recent LDC Mergers and Acquisitions

- In 1999, NCNG was acquired by CP&L (now Progress Energy)
- In 1999, Public Service was acquired by SCANA Corporation
- In 2002, NUI North Carolina Gas was acquired by Piedmont
- Application is now pending for NCNG and one-half ownership interest in Eastern NCNG to be acquired by Piedmont

Local Distribution Companies' Service Territories



Local Distribution Companies' Customer Profile



	Residential	Commercial	Industrial
▣ Piedmont	381,557	42,176	1,824
□ PSNC	327,706	34,717	414
■ NCNG	108,398	14,302	489

State Regulatory Framework for Local Distribution Companies

Certification

- NCUC issues certificates defining LDC service territories
- Certificate obligates holder to provide adequate service at reasonable rates
- LDC must provide adequate service to some portion of each county in certificated area within three years
- If adequate service not provided within three years, Commission orders certificate forfeited

State Regulatory Framework for Local Distribution Companies *cont.*

Rates

- NCUC establishes level of base rates
- LDCs may file purchased gas adjustment proceedings at any time to adjust gas cost portion of rates prospectively
- NCUC conducts annual prudency review of each LDC to compare prudently incurred costs with costs actually recovered from customers and orders increments or decrements to "true up" under-recoveries or over-recoveries

Current Issues: Expansion into Unserved Areas

- Ten years ago, one third of NC counties were unserved
- General Assembly established Natural Gas Expansion Fund in 1991
  - Allows LDCs to subsidize uneconomic expansion projects using refunds from interstate pipeline suppliers and other sources
- General Assembly authorized $200 million bond issuance for natural gas expansion in 1998
- Service has been extended, or is being extended, to 30 counties using these mechanisms
- Only 4 counties remain without service or plans for service

Current Issues: Gas Wholesale Price Volatility

- Natural gas has become a very volatile commodity
- In the 2000-2001 Winter, wholesale gas prices rose dramatically
- NCUC provided guidance to LDCs regarding hedging
- Recently, gas prices have begun another sudden increase
- NCUC has asked the three largest LDCs to meet March 17, 2003, to discuss the current price run-up

III Telecommunications Basic Facts

- 16 Incumbent Local Exchange Companies (ILECs)
  - 8 ILECs price-plan regulated
  - 8 ILECs rate-of-return regulated
- 197 Competing Local Providers (CLPs)
  - May lower or raise rates on 14 days' notice
- 430 Interexchange Long Distance Carriers (IXCs)
  - May lower or raise rates on 14 days' notice

Basic Facts: Telecom Utilities *cont.*

- 304 Payphone Service Providers (PSPs)
- 23 Shared Tenant Services (STS)
- Commission does not regulate:
  - Telephone Membership Corporations
  - Cable and Satellite
  - Commercial Mobile Radio Service *(includes cellular and pagers)*
  - Data and Internet Service Providers

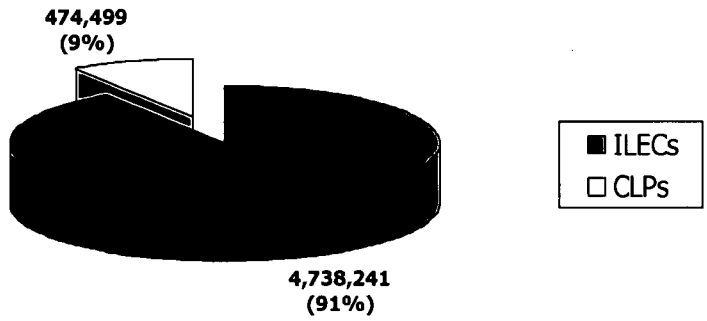
Basic Facts: North Carolina ILECs

- Largest NC Incumbent Local Exchange Companies (ILECs):
  - BellSouth - 2,362,400 access lines
  - Carolina Telephone (i.e. Sprint) - 1,193,945 access lines
  - Verizon South - 342,535 access lines
  - Central Telephone (i.e. Sprint) - 276,397 access lines
- Other 12 ILECs serve total of 562,964 access lines in NC

Basic Facts: North Carolina CLPs

- 197 Competitive Local Providers (CLPs) certified to provide local exchange service in NC
- 474,499 access lines served by CLPs *(Dec. 2002)*
  - 70,381 residential
  - 404,118 business

Basic Facts:
Access Lines Served by ILECs & CLPs

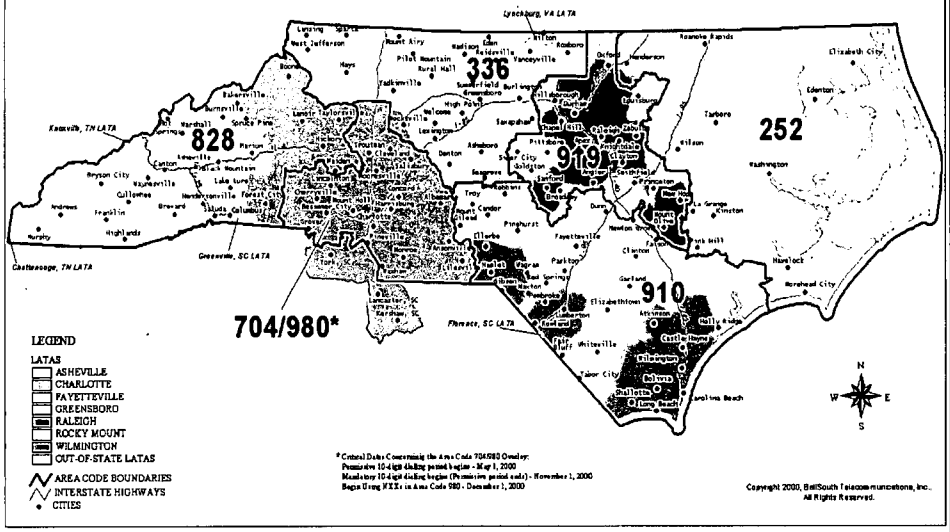


Basic Facts:
North Carolina Area Codes

Area Code	Exhaust Date*
919	3rd Qtr. 2005
336	2nd Qtr. 2006
252	1st Qtr. 2007
910	1st Qtr. 2008
828	3rd Qtr. 2011
704/980	4th Qtr. 2017
919/984	2nd Qtr. 2032

** Exhaust dates are current projections and change regularly.*

North Carolina - Area Code Map



IV Transportation Basic Facts

- Motor Carriers of Household Goods
  - 198 Certificated Movers
  - New Certification Regulations Effective January 1, 2003
  - Maximum Rate Tariff Effective January 1, 2003
- Regular Route Passenger Carriers
  - 7 Certificated Bus Companies
  - Provides Passenger Service over Regular Routes
- Passenger Brokers
  - 29 Broker's Licenses
  - Brokers Tours and Trips with Existing Bus Companies
- Ferryboat Operators
  - 14 Certificated Ferry Boat Operators
  - Passenger Transportation Via Water

V Water and Wastewater Basic Facts

- Anyone furnishing water to the public for compensation or operating a public sewerage system for compensation is a public utility *(G.S. 62-3(23)a.2)*

- Regulation does not include –
  - Operations with less than 15 residential customers
  - Municipal or County systems
  - Sanitary Districts
  - Mobile Home Parks (where water/wastewater included in rent)
  - Homeowners' Associations
  - Nonprofit and consumer owned corporations

Basic Facts: Water/Wastewater Utilities

- NCUC grants certificates for specific service area and regulates rates and service aspects of utility operation

- NCUC does not regulate drinking water quality; requires compliance with DENR, Division of Environmental Health regulations

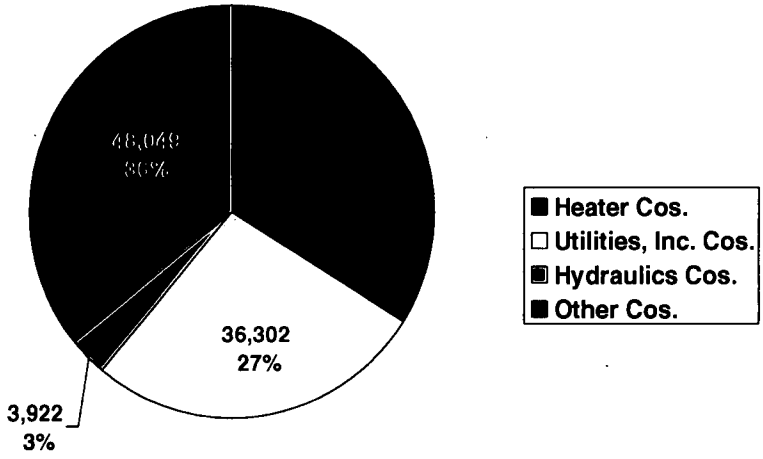
- NCUC does not regulate discharge of sewage being treated, but requires compliance with DENR, Division of Water Quality regulations

Basic Facts: Water/Wastewater Utilities

- Traditional Companies
  - 69 Water and Wastewater
  - 105 Water only
  - 45 Wastewater only
  - 133,633 Water and 62,218 Wastewater customers
- Resale Companies
  - 150 Water and Wastewater
  - 66,525 Water and Wastewater customers
- Traditional and Resale combined - 1,886 systems

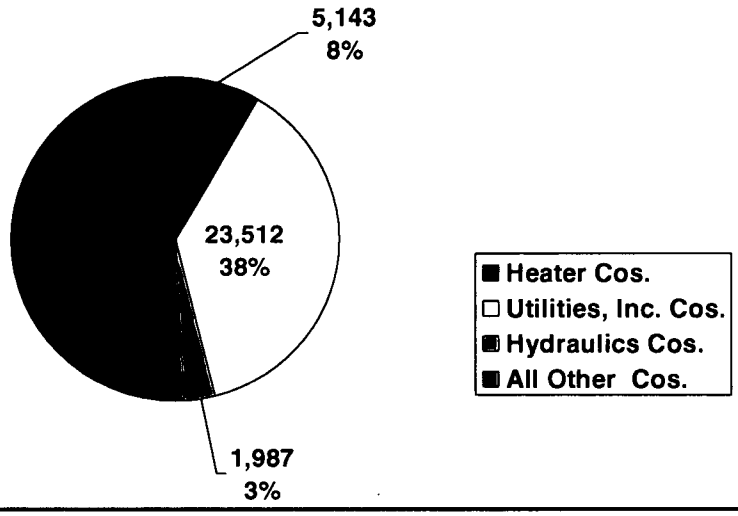
Basic Facts: Water

Distribution of 133,633 Traditional Water Customers



Basic Facts: Wastewater

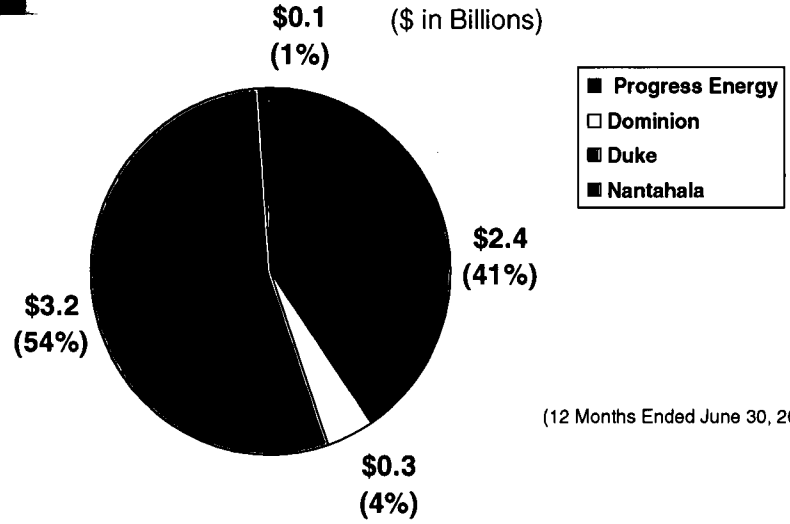
Distribution of 62,218 Traditional Wastewater Customers



VI Financials

Operating Revenues by Electric Utility ($6B Total)

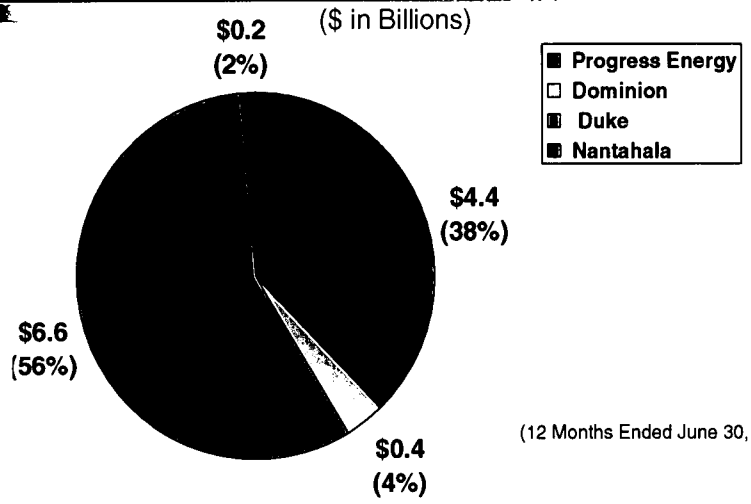
($ in Billions)



(12 Months Ended June 30, 2002)

Net Plant Investment by Electric Utility ($11.6B Total)

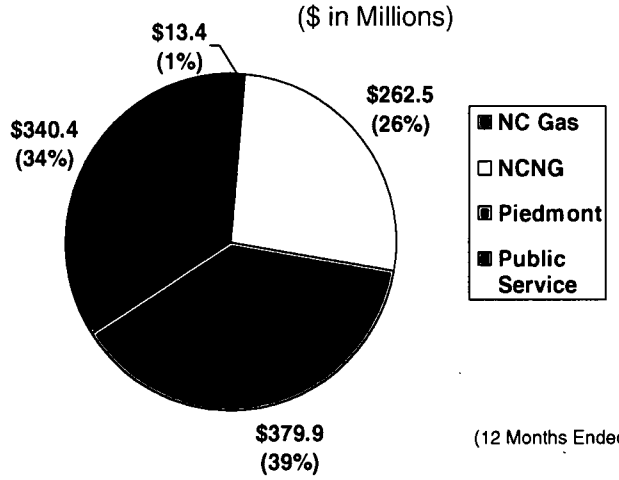
($ in Billions)



(12 Months Ended June 30, 2002)

Operating Revenues by Natural Gas Utility ($996.2M Total)

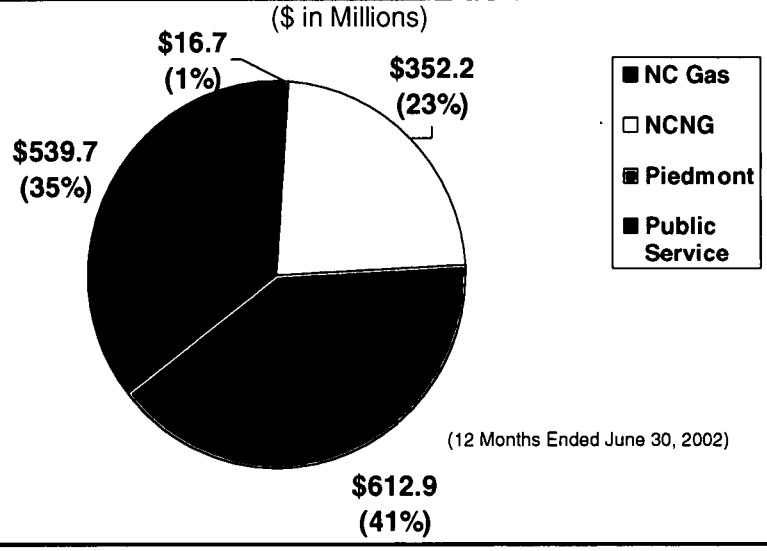
($ in Millions)



(12 Months Ended June 30, 2002)

Net Plant Investment by Natural Gas Utility ($1,521.5M Total)

($ in Millions)



(12 Months Ended June 30, 2002)

Telephone Utilities: Operating Revenues

(10 Largest Local Exchange Companies)

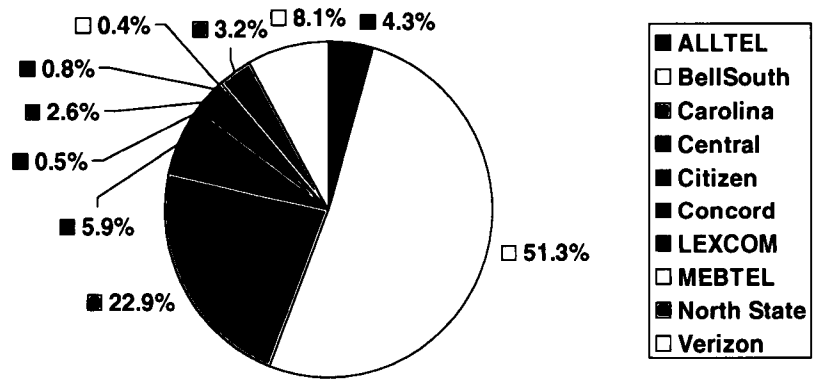
($ in Millions)

BellSouth	$ 1,255.7
Carolina	559.5
Verizon	198.0
Central	143.3
ALLTEL	106.6
North State	79.0
Concord	63.3
LEXCOM	20.5
Citizens	11.3
MEBTEL	8.8
Total	$2,446.0

(12 Months Ended December 31, 2001)

Operating Revenues

(10 Largest Local Exchange Companies – Percentages)



(12 Months Ended December 31, 2001)

Telephone Utilities: Net Plant Investment

(10 Largest Local Exchange Companies)

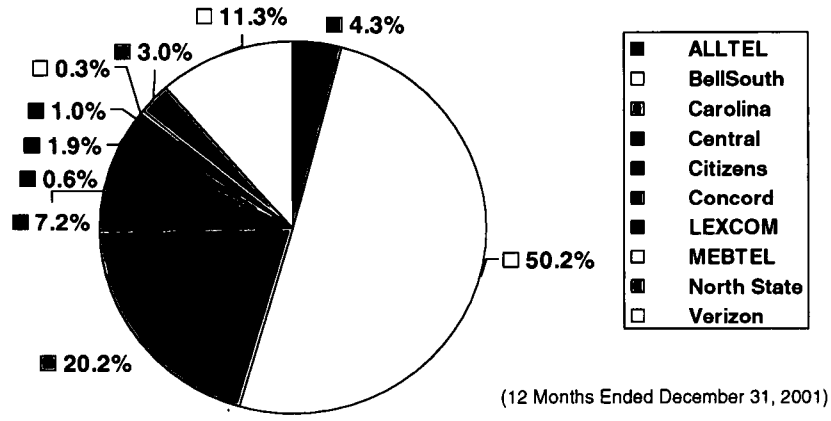
($ in Millions)

BellSouth	$ 1,932.8
Carolina	779.7
Verizon	433.5
Central	278.1
ALLTEL	165.0
North State	114.8
Concord	74.0
LEXCOM	38.8
Citizens	23.2
MEBTEL	10.8
Total	$ 3,850.7

(12 Months Ended December 31, 2001)

Net Plant Investment

(10 Largest Local Exchange Companies – Percentages)



(12 Months Ended December 31, 2001)

Major Issues

- Electricity
  - Transmission, nuclear waste disposal, Smokestack Bill & other environmental issues, Green Power, wholesale/retail competition, large municipal debt
- Telecommunications
  - Slow transition to competitive marketplace, market failures, broadband deployment, service quality, Universal Service
- Natural Gas
  - Price volatility, supply, dominant position as fuel source for new generation, infrastructure expansion
- Water & Wastewater
  - Supply, environmental issues, industry consolidation
- Generic
  - Financial market pressures, storm impacts, emergency preparedness, accounting issues, merger conditions, tension at intersection of regulated and competitive activities of regulated companies

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

March 25, 2003 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sara Tony	Sen Kerr
Rob Dasgloo	NC State Watch
Camilla Stell	Kennedy Covington
Roy Ericson	Utilities Commission Staff
Jolola Brown-Bland	NCUC Commission Staff
Chris Nichols	Hunton + Williams
Dan Wascott	Sprint
Jeffrey L. Davis	NCUC - Public Staff
Cynthia Smith	NCUC - Public Staff
Ben Turner	NCUC - Public Staff
CAROL STAHL	NCUC - PUBLIC STAFF

VISITOR REGISTRATION SHEET

Senate Commerce Committee — March 25, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Lee	NCUC Public Staff
Bob Gillam	NCUC Public Staff
Nat Carpenter	NCUC Public Staff
Tony Wike	NCUC Public Staff
Jim Kerr	NCUC
[signature]	PFPNC
[signature]	Progress Energy
Beatrice Williams	CUCA

AGENDA

SENATE COMMERCE COMMITTEE
Tuesday, April 1, 2003 at 11:00 AM
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Presentation

- Presentation by Mr. James Fain, Secretary, Department of Commerce

III. Bill

- SB 355 Wake Forest Force Limit Sen. Stevens

IV. Other Business

V. Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, April 1, 2003 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, April 1, 2003, in Room 1027 of the Legislative Building. Fifteen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles opened the meeting by announcing the committee would consider Senate Bill 355, Wake Forest Force Limit, sponsored by Senator Richard Stevens. Senator Stevens was introduced to explain the bill. Senator Forrester moved for a favorable report. Senator Soles asked for comments from the audience. Mr. Dave Simpson, representing the Association of General Contractors, said they opposed the bill, stating that independent contractors could do the work more quickly and would be more accountable. Mr. Henry Jones, representing the Electric Contractors, said they opposed the bill, stating that the members of his organization believe in the competitive bidding process. A vote was taken and the motion carried.

Senator Soles introduced Mr. James Fain, Secretary of the Department of Commerce. Mr. Fain spoke about four cornerstones of the Department's commitment to develop the state's economy: (1) building communities attractive to businesses, (2) insuring a globally competitive workforce, (3) making the business climate attractive to businesses, and (4) communicating how we can invest in science and technology assets in our universities and transfer the developed technology to the marketplace.

Secretary Fain identified three initiatives to assist in economic development in the state: (1) utilizing the commitment of President Molly Broad of the University of North Carolina System for the university system to serve the state in support of economic development, (2) building on our scientific strengths, particularly in the area of biotechnology, and encouraging both research and manufacturing, and (3) capturing an automobile assembly plant to build on the automotive industry already existing in the state and to provide displaced manufacturing employees with a new employment opportunity.

Finally, Secretary Fain identified the Department's wish list: (1) resources to enhance their business recruiting website, (2) building a "thinking" capacity within the Department to plan for five years from now, and (3) taking a western regional service center supported by an Appalachian Regional Commission (ARC) grant state-wide to provide services to existing businesses on a 24 hours a day, 7 days a week basis. He added that the Focused Industrial Training (FIT) funds in the community college budget are important to the latter.

The meeting adjourned at 11:55 a.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, April 01, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **355** Wake Forest Force Limit.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 355*

Short Title:	Wake Forest Force Limit.	(Local)
Sponsors:	Senators Stevens; Carrington, Malone, and Reeves.	
Referred to:	Commerce.	

March 11, 2003

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF WAKE FOREST TO USE TOWN LABOR FOR PHASED CONSTRUCTION OF ELECTRICAL DISTRIBUTION FEEDER CIRCUITS AND FOR CONSTRUCTION OF AN ELECTRIC SUBSTATION WITHOUT REGARD TO THE DOLLAR VALUE OF THE LABOR.

The General Assembly of North Carolina enacts:

SECTION 1. The Town of Wake Forest may use qualified labor on the permanent payroll of the Town for the following projects without regard to the dollar limitations contained in G.S. 143-135:

(1) Electrical distribution feeder circuits, to be built in phases.

(2) Electrical Substation.

SECTION 2. The project listed in subdivision (1) of Section 1 of this act is only covered by Section 1 of this act if construction on the first phase begins no later than December 31, 2003. The final phase must commence construction no later than December 31, 2009, in order to be covered by Section 1 of this act.

SECTION 3. The project listed in subdivision (2) of Section 1 of this act is only covered by Section 1 of this act if construction on the first phase begins no later than December 31, 2006.

SECTION 4. This act is effective when it becomes law.

SENATE BILL 355:
Wake Forest Force Limit

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Stevens
Date:	April 1, 2003	**Summary by:**	Wendy Graf Ray
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 355 would allow the Town of Wake Forest to use Town labor for two construction projects without regard to dollar limits set out in the North Carolina General Statutes regarding public construction contracts.***

CURRENT LAW: Article 8 of Chapter 143 of the General Statutes sets out requirements for the bidding of public contracts. G.S. 143-135 exempts from the requirements of Article 8 construction or repair work undertaken by the State or subdivisions of the State when both of the following apply:

- The work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned.
- Either the total cost of the project does not exceed $125,000, or the total cost of labor on the project does not exceed $50,000.

BILL ANALYSIS: Senate Bill 355 would allow the Town of Wake Forest to use qualified labor on the payroll of the Town, without regard to the dollar limitations set out in G.S. 143-135, on the following projects:

Electrical distribution feeder circuits, to be built in phases. The act only applies to this project if construction on the first phase begins no later than December 31, 2003, and applies to the final phase only if construction on that phase begins no later than December 31, 2009.

Electrical Substation. The act only applies to this project if construction begins no later than December 31, 2006.

EFFECTIVE DATE: The act would be effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 1, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David M. Barnes	Poyner & Spruill LLP
Paul A. Johnson	CAA
Patrice Roesler	NAIOP
[illegible]	Parker, Poe, Adams & Bernstein, LLP
Chad Essick	Edmisten & Webb
Beau Mills	NC Metropolitan Coalition
[illegible]	NCRA
[illegible]	Bone and Assoc.
Edwin Wilson	Hemophilia of N.C.
Michael Thompson	Dominion NC Power
Steve Woodson	NC Farm Bureau

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 1, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lucius Pullen	Attorney
Robert Bridges	Town of Wake Forest
Chris Malone	Town of Wake Forest
Roger Knight	Town Atty - Town of Wake Forest
Roe O'Donnell	Town of Wake Forest
Mark Williams	Town of Wake Forest
Dilly Simpk	Carolinas AGC
Henry Jones	Attorney - Raleigh
John Goodman	Mercer Assoc.
Daniel A. Sessoms	Dept of Commerce
Katherine Davis	Electric Cities

AGENDA

SENATE COMMERCE COMMITTEE
Tuesday, April 8, 2003 at 11:00 AM
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Bill

- SB 437 General Contrs. Board/Est. Temp Rules/Bidding Senator Hoyle

III. Presentation

- Presentation by Mr. Jim Long, Commissioner of Insurance

IV. Other Business

V. Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, April 8, 2003 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, April 8, 2003, in Room 1027 of the Legislative Building. Twelve members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles opened the meeting by introducing the pages: Heather Moore from Bessemer City, sponsored by Senator Hoyle; and Wells Struble from Raleigh, sponsored by Senator Reeves.

Senator Soles introduced Senator Hoyle to explain the Senate Bill 437, Gen. Contrs. Board/Est. Temp. Rules/Bidding. Senator Purcell moved a favorable report of the bill. Senator Sloan asked to be excused from voting on the bill because he holds an electrical license. The motion carried.

Senator Soles introduced Mr. Jim Long, Commissioner of Insurance, to make a presentation about the Department of Insurance. Mr. Long provided a document entitled "North Carolina Department of Insurance, 2001-2002 Biennial Report" (copy attached), and reviewed the highlights of the report.

Senator Soles announced the committee would be meeting twice a week preparing for the crossover deadline on April 24.

The meeting adjourned at 11:25 a.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, April 08, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **437** Gen. Contrs. Board/Est. Temp. Rules/Bidding.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 437

Short Title:	Gen. Contrs. Board/Est. Temp. Rules/Bidding.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Commerce.	

March 17, 2003

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE LICENSING BOARD OF GENERAL CONTRACTORS TO ESTABLISH TEMPORARY RULES THAT ALLOW A LICENSEE TO BID AND CONTRACT DIRECTLY WITH THE OWNER OF A PUBLIC BUILDING PROJECT IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Licensing Board of General Contractors may adopt rules allowing a licensee under Article 2 or 4 of Chapter 87 of the General Statutes to bid and contract directly with the owner of a public building project if: (i) a licensed general contractor performs all work that falls within the classifications in G.S. 87-10(b) and the Board's rules; and (ii) the total amount of the work classified does not exceed a percentage of the total bid price pursuant to rules established by the Board.

Notwithstanding any other provisions of law to the contrary, the Board may adopt temporary rules to implement this section pursuant to G.S. 150B-21.1.

SECTION 2. This act is effective when it becomes law.

SENATE BILL 437:
Gen. Contrs. Board/Est. Temp. Rules/Bidding

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Hoyle
Date:	April 8, 2003	**Summary by:**	Wendy Graf Ray
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 437 would allow the North Carolina Licensing Board of General Contractors to adopt rules that allow licensed plumbing and heating contractors and licensed electrical contractors to bid directly on public building projects in certain circumstances.

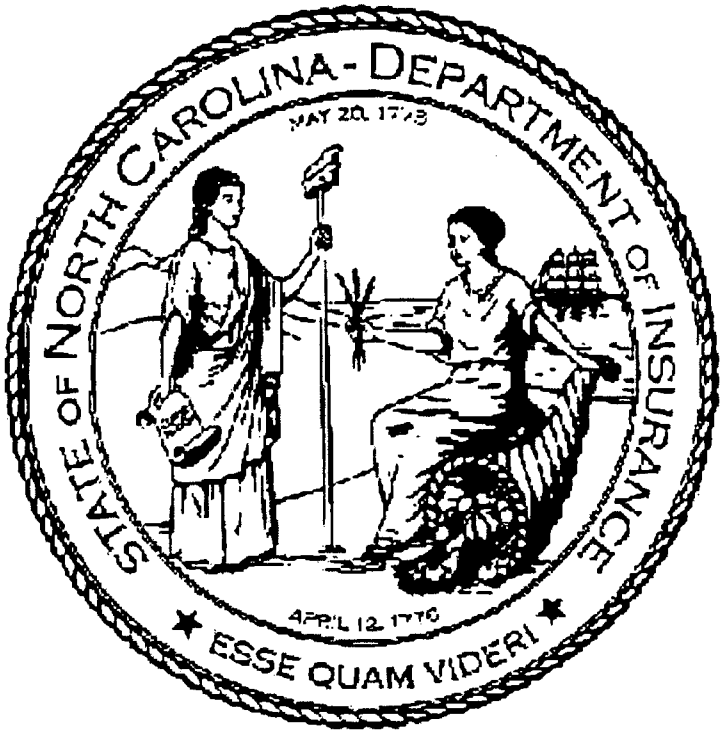
CURRENT LAW: Under the current law in North Carolina, only a licensed general contractor can bid directly on a public construction project that includes a variety of work to be performed by different subcontractors. Licensed plumbing and heating contractors and licensed electrical contractors are only permitted to bid directly on a project if 100% of the work to be done fits within their trade specialty. For example, if a public construction project involved 90% electrical work and only 10% general contracting work, the bid would still have to come from a general contractor, who would then subcontract the majority of the work out to an electrical contractor.

BILL ANALYSIS: Senate Bill 437 would allow the North Carolina Board for General Contractors to adopt a rule to allow licensees under Article 2 (Plumbing and Heating Contractors) or Article 4 (Electrical Contractors) of Chapter 87 of the General Statutes to bid and contract directly with the owner of a public building project if both of the following apply:

- A licensed general contractor performs all of the work that falls within the classifications for licensed general contractors, as set out in G.S. 87-10(b), and the Board's rules.
- The total amount of work to be performed by a general contractor does not exceed a specific percentage (to be established by the Board) of the total bid price.

BACKGROUND: The Board did adopt a rule in 2001 allowing contractors who were not licensed as general contractors to bid directly on public building projects if the general contracting work was performed by a licensed general contractor and the amount of work to be performed by a general contractor did not exceed 25% of the total amount of the bid. However, the rule was rejected by the Administrative Rules Review Commission on the grounds that the Board did not have the statutory authority to adopt such a rule. Senate Bill 437 would give the Board the authority it needs to adopt this rule as planned.

EFFECTIVE DATE: The act would be effective when it becomes law.



North Carolina Department of Insurance

2001-2002 Biennial Report

Jim Long
Insurance Commissioner

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Department of Insurance Mission Statement

The North Carolina Department of Insurance serves the citizens of North Carolina through consumer protection and education, safety training and promotion, and regulation of specified activities and industries.

This is accomplished by:

- Assuring an optimum marketplace in which consumers can readily purchase fairly-priced insurance products from sound, responsive entities;
- Educating the public in loss prevention, safety awareness and developing life safety standards;
- Maintaining a well-managed, fiscally-responsible organization staffed by knowledgeable, courteous, professional employees.

At all times, the affairs of the department are conducted in an open, ethical manner and in the best interests of the public.



Jim Long,
Commissioner of Insurance

Company Services Group

The Company Services Group consists of five divisions: Financial Evaluation, Actuarial Services, Information Systems, Administrative Supervision and Estate Operations.

The Financial Evaluation Division monitors the solvency of insurance companies; reviews admission of out-of-state, domestic and surplus lines companies seeking to do business in the state and audits domestic and foreign insurance organizations.

The Actuarial Services Division assists in the review of rate, form and statistical filings. The division also conducts actuarial studies for financial evaluation work and is involved in special projects and studies.

The Information Systems Division manages the Department's information technological resources, which include data processing, word processing, office automation, data communications and voice communications.

The Administrative Supervision Division monitors the financial condition and operations of domestic insurance companies to determine whether a troubled entity can be prevented from going into formal delinquency proceedings by returning the insurer to a sound financial condition and business practices.

The Estate Operations Division works closely with the Administrative Supervision Division to evaluate the necessity of instituting formal delinquency proceedings and to provide guidance to troubled insurers after leaving administrative supervision.

Financial Evaluation Division

The Financial Evaluation Division is comprised of the Company Admissions Section, the Financial Analysis Section, the Financial Examination Section and the Continuing Care Retirement Communities Section. The Division regulates all authorized insurers, entities that self-insure for workers' compensation, certain third party administrators, managing general agents, accredited reinsurers and continuing care retirement communities for compliance with the solvency laws of this state. The ultimate objective of this regulation is to reduce the likelihood of any of these entities failing or to mitigate the effect of any of these entities' insolvency on the consumers of this state.

Company Admissions Section

The primary responsibility of this section is the evaluation of the financial condition of insurance companies applying for initial licensing, or other type of authority to transact insurance business in North Carolina.

It is important that insurance entities meeting or exceeding the minimum requirements be licensed or authorized so that adequate and competitive markets are available to North

Carolina insurance consumers. It is equally important that any entity not meeting the minimum requirements be denied a license or authority in order to protect North Carolina insurance consumers from potential insurer insolvencies.

At the beginning of 2001, this section began processing applications for admission of insurance companies through the uniform certificate of authority process developed by the NAIC. This process involves the same financial and related information being filed in multiple states to support initial licensing. Although the information filed is the same in all states, the decision to approve initial licensing in North Carolina and the other individual states is based upon the admission statutes in each individual jurisdiction. At the end of 2002, all 50 states and the District of Columbia participated in the uniform certificate of authority application process.

During the 2001-2002 biennium, insurance companies continued to demonstrate considerable interest in establishing business in North Carolina. During the last two years, 87 new applications were received.

A total of 52 insurance entities were found to satisfy North Carolina admission requirements and received initial certificates of authority during the biennium. This number included the formation of one North Carolina domestic insurance company.

The section is also responsible for the initial review of insurance companies applying for eligibility for the placement of surplus lines business. The surplus lines market is for insurance products that are not readily available to consumers through licensed companies.

During the 2001-2002 biennium, the section received and reviewed 8 filings for surplus lines eligibility. Eight new companies were found to qualify.

Additionally, the section is responsible for reviewing applications for accredited reinsurer status in North Carolina. During 2001-2002, seven filings were received and seven companies were found to satisfy the statutory requirements.

The section is responsible for the financial review of risk retention groups filing for initial registration. It is also responsible for making the initial determination that purchasing groups satisfy the requirements for registration. These entities operate under the authority of the Federal Risk Retention Act and North Carolina Insurance Statutes governing liability risk retention. The federal act permits risk retention groups and purchasing groups to provide certain types of liability insurance coverage to their members if the group is properly licensed in at least one state and files certain minimal financial information with each state in which it desires to do business.

We have required as much information as allowed under the federal act in order to evaluate the merits of risk retention group filings. North Carolina statutes require a purchasing group to buy its coverages from an insurance company that is either licensed or eligible for surplus lines business in this state.

During the biennium, 14 filings for initial registration were received from risk retention groups and 31 initial filings were received from purchasing groups. 14 risk retention groups and 31 purchasing groups received initial registration during the period.

Financial Analysis

The primary responsibility of this section is to monitor the solvency of all insurance organizations authorized by the Department. Monitoring the financial condition of insurance organizations is accomplished by reviewing the financial position and operating results of each insurance organization through financial analysis systems that encompass annual and interim financial statements and other financial data. A conclusion is reached on the financial health of each insurance organization and the required steps are taken to safeguard the interests of North Carolinians. The financial analysis process utilizes the database and programs of the National Association of Insurance Commissioners and systems, which have been developed in-house.

The section also processes renewal license applications of insurance organizations and oversees corporate changes in insurance organizations (i.e. acquisitions, mergers, dissolutions, charter changes, bylaw changes and Holding Company Act filings).

In addition, Financial Analysis oversees the administration of security deposits from insurance organizations. These deposits are required of insurance organizations for the protection of policyholders. The funds are maintained by Wachovia Bank, N.A. under a safekeeping agreement and total approximately $545 million at present. Most of the functions of the collateral securities program are computerized, allowing rapid processing of transactions and better monitoring of the quality of securities on deposit.

Performance Indicators

	2001-2002	2000-2001
Insurance organizations regulated	2,292	2,316
Financial statements analyzed	14,325	14,475
Audited financial statements reviewed	1,595	1,597
Insurer licenses suspended	2	7
Insurer licenses revoked	2	2
Administrative actions	87	74
Securities on deposit for policyholder protection	$545,000,000	$540,000,000
Certificates of good standing, deposit, etc., processed	5,500	5,000

Financial Examination

This section serves as a complement to Financial Analysis. The section conducts varying types of audits ranging from full examinations to examinations of very specific issues. The latter usually involves the resolution of issues that can not be resolved during the financial analysis process. Practices and procedures have been developed by this section, the Financial Evaluation Division and the National Association of Insurance Commissioners (NAIC).

Application software sub-licensed from the NAIC is used to perform examination procedures. Also, the NAIC has endorsed audit software that will assist in automating the entire exam process. North Carolina is one of 40 states currently using or implementing this software.

Automation is of great importance; however, technological advances and the development of more sophisticated software require the section's commitment to keep hardware and software current.

Communication with the office and the NAIC is an important part of the examination process. Examiners have electronic access to both the office and to the financial information of insurance entities through the NAIC. The ability to communicate effectively while on-site is critical to conducting an efficient and effective examination.

Continuing Care Retirement Communities

The Continuing Care Retirement Communities Section has responsibility for the registration, disclosure, contracts and the financial monitoring requirements of continuing care facilities in North Carolina. Continuing Care Retirement Communities (CCRCs) are entities that provide lodging or independent living combined with health-related services under a contract for the life of the individual, or for a period in excess of one year. The section provides financial oversight and licenses these entities. Additional safeguards for facility residents and prospective residents are provided through the oversight of disclosure statements.

There are 48 licensed CCRCs in North Carolina and five under development. Currently there are almost 15,000 senior adults residing in North Carolina CCRCs.

On an annual basis, the section reviews the disclosure statement, contract and audited financial statements for all licensed CCRCs. In addition, the section works with providers/sponsors who are currently developing, or are interested in developing, new CCRCs in North Carolina for compliance with statutes and rules.

The section is also responsible for reviewing the financial statements for Third Party Administrators Risk Retention Groups and Multiple Employer Welfare Arrangements.

Actuarial Services Division

Actuarial Services assists other Department of Insurance divisions in regard to all aspects of actuarial science. Divisions that receive actuarial assistance include the:

- Consumer Services Division with consumer complaints on rate increases and with general questions concerning insurance;
- Property and Casualty Division in reviewing rate filings, loss cost filings, form filings and statistical filings;
- Financial Evaluation Division with reviewing Actuarial Opinions and Memorandums, reviewing of HMO claim reserves and various ad hoc projects;
- Field Audit Division with various claim reserve and proper accounting of reserve items;
- Managed Care Division in regard to the licensing of new HMOs and the review of expansion and material modification requests;
- Life and Health Division with reviewing individual accident and health insurance and HMO rate revisions and with the review of unusual life, annuity and health insurance products.

Other government agencies that have received actuarial assistance include the:

- State Health Plan with review of all rates submitted by HMOs;
- General Assembly's Research Division with cost estimates on proposed health and life insurance legislation and various ad hoc projects relating to actuarial science.

Life and Health Section

This Division's review of individual accident and health rate change requests saved consumers, covered under such policies, $12.2 million in 2001, and $25.1 million in 2002. Since the Division's review of rates began, consumers have realized savings of approximately $90.6 million as of December 2002.

During the biennium, Actuarial Services collected data and evaluated the impact of mandated reductions in the credit life and accident and health insurance prima facie rates. The combined savings to consumers purchasing credit insurance, is approximately $51.8 million in 2001, and $54.3 million in 2002. Since 1988, the first year of an evaluation of a prima facie rate reduction, consumers have realized savings of approximately $576.1 million as of December 2002.

Actuarial Services annually reviews the Medicare supplement insurance refund calculations submitted by insurance carriers. All carriers were correctly performing the calculations and no refunds were made for calendar year 2001. The Division continues to review all Small

Employer Group actuarial rate certifications to assure compliance with the Small Employer Group Health Coverage Reform Act.

Actuarial Services also assists in the review of licensing MEWAs and the review of their specific and aggregate maximum net retention level. During the biennium, Actuarial Services' review of renewal licensing applications resulted in some MEWAs either increasing their surplus to accommodate their specific maximum net retention levels or lowering their specific maximum net retention level.

Actuarial Services acts as the life and health risk assessment division for the Department and works closely with the Department's Financial Evaluation Division concerning claim reserve and premium rate analyses and solvency issues for HMOs and MEWAs.

Property and Casualty Section

Actuarial Services Division works closely with the Property and Casualty Division and the Financial Evaluation Division in reviewing rate filings, loss cost filings, form filings and statistical filings. Actuarial Services Division has been heavily involved in private passenger automobile rate filings, workers compensation filings and self-insured compensation funds. The Division, together with the Department counsel, prepares and presents the department's case in the public rate hearings. The Division strives to maintain rates that are not excessive to policyholders, yet adequate so as to provide a reasonable profit to companies and to protect their solvency.

In the year 2001, the North Carolina Rate Bureau filed for a +10.6 percent increase in private passenger automobile rates. As a result a public hearing called by the Insurance Commissioner, the Rate Bureau implemented a +5.0 percent increase saving the public about $166 million. Additionally, as a result of this hearing, an estimated $529 million will be held in escrow and may be refunded to consumers pending future court decisions.

In the year 2002, the North Carolina Rate Bureau filed for an increase of +5.9 percent in private passenger automobile rates. The Commissioner's order, following the hearing, was for a reduction of -17.8 percent. The North Carolina Rate Bureau subsequently implemented +5.9 percent increase. As a result of that order an estimated $202 million will be held in escrow and may be refunded to consumers pending future court decisions.

The Division reviewed a request by the North Carolina Rate Bureau for a decrease in workers' compensation loss costs of -1.2 percent to be effective in 2002. This decrease resulted in savings of about $9 million. The Division reviewed the rates for the self-insured funds domiciled in North Carolina and has assisted the Financial Evaluation Division in the financial review of these funds.

In 2002, the North Carolina Rate Bureau filed for an increase of +20.0 percent in homeowners rates. Following a consent order, +5.0 percent was implemented resulting in

savings to consumers of $142 million. The Rate Bureau proposed no rate change in the dwelling fire and extended coverage rates during this period of time.

In addition to these activities, the Division has reviewed nearly 750 individual company filings for various lines of insurance.

Information Systems Division

The Information Systems Division deals with high-technology issues and equipment in support of the Department's regulatory function. This activity, known within state government as "information resources management", includes voice, image and data processing equipment and software, as well as telecommunications systems such as two-way radios, telephones and facsimile equipment.

Day-to-day responsibilities include programming, operating, planning and managing a cluster of local area network (LAN) servers connected via the state's wide area network; and providing support for the Department's microcomputers. Internet email connects our staff with all other state departments of insurance and National Association of Insurance Commissioners (NAIC) staff, other state government agencies, numerous private insurance companies and other Internet addresses worldwide. The Information Systems Division is directly responsible for developing an integrated client/server application system on the network: consumer complaint tracking and analysis, company licensing, property and casualty rate and forms filings, and life and health rate and form filings.

Staff of the Division also work with computer programmers at State Information Processing Services (SIPS) to maintain and develop major software systems for the Department's Agent Services Division. Other smaller applications include fire incident reporting and an inventory of state property, which is self-insured by the Department.

The Information Systems Division also consults with the Department's line divisions regarding technology planning. Information Systems is the Department's representative on the Chief Information Officers Council at ITS, and represents Commissioner Long on the Information Resources Management Commission as required. Similarly, the Division exercises approval authority over all acquisitions of information and technology resources such as telephones, radios, computers, software, services and maintenance contracts.

Under the state's revised IRM structure the division will continue to perform the lead role within the Department for integrated information technology planning and management.

Administrative Supervision Division

The Administrative Supervision Division has regulatory scrutiny over potentially troubled insurance entities domiciled in North Carolina. The primary responsibility of this Division is to closely monitor the financial condition and operations of domestic insurance entities

deemed to be in a potentially hazardous financial condition. The ultimate goal of this Division is to determine whether a troubled insurance entity can be prevented from going into formal delinquency proceedings and returned to sound financial condition and good business practices.

Examples of close monitoring procedures performed by this Division include:

- financial analyses of annual and interim financial statements and other financial data, including holding company and affiliated company data;
- initiating, monitoring and enforcing workout plans designed to correct deficiencies causing the hazardous financial condition;
- targeted financial and operational examinations;
- formal administrative supervision proceedings designed to protect insurance company assets through a workout period.

Potentially troubled insurance companies are transferred to the Administrative Supervision Division via interaction with the Financial Evaluation Division and other divisions of the Department of Insurance.

Estate Operations Division

The Estate Operations Division works closely with the Administrative Supervision Division to evaluate the necessity of instituting formal delinquency proceedings and to provide guidance to troubled insurers after leaving administrative supervision. The unit's ultimate goal is to rehabilitate and/or liquidate troubled and insolvent insurers in order to protect and preserve, to the maximum extent possible, the remaining assets of the insurer for the benefit of the company's policyholders, creditors and the public.

The Estate Operations Division manages the financial and operational affairs of domestic insurance entities placed into receivership. Examples of specific duties performed include:

- marshaling assets, pursuing asset recoveries and liquidating assets of companies in receivership to the maximum benefit of policyholders and other creditors;
- managing the operations of the various departments of the insurer through a runoff period including claims, underwriting, policyholder service, data processing, accounting and personnel;
- coordinating relationships and issues involving the various state guaranty associations called upon to pay policyholder claims;
- providing litigation support services and coordinating relationships and issues involving federal and state investigative agencies outside of the Department of Insurance.

Technical Services Group

The Technical Services Group is comprised of the Property and Casualty Division, Market Examinations Division, Life and Health Division, Seniors' Health Insurance Information Program and the Managed Care and Health Benefits Division. The work performed by divisions in this group work with centers on policy issues, taking into consideration how they are implemented in insurance products and day-to-day company operations.

The Property and Casualty Division's primary responsibility is the review of rate, rule and policy form filings relating to property and casualty coverages. These filings are made by insurance companies, statutory bureaus and licensed rating organizations.

The Life and Health Division is responsible for the review and approval of rate, rule and policy form filings submitted by life and health insurance companies and issuance of licenses for third party administrators.

The Market Examinations Division conducts field examinations of the market practices of domestic and foreign insurers and their representatives.

The Seniors' Health Insurance Information Program's (SHIIP) primary function is to train adult volunteers to help older adults through the maze of Medicare regulations, Medicare supplement insurance, long-term care insurance and claims procedures. In recent years, Medicare's move toward managed care options has led SHIIP to develop new training courses. Recently, there has been an increased interest in long-term care, and the need for information on this product has grown. SHIIP's ability to increase its activities and effectiveness depends on collaboration with numerous state, county, and federal agencies, as well as with community organizations.

The Managed Care and Health Benefits Division (MCHB) monitors and regulates the activities of managed care entities such as health maintenance organizations (HMOs) and managed care indemnity health insurers, including their arrangements with Preferred Provider Organizations (PPOs) and Multiple Employer Welfare Arrangements (MEWAs). The Division's emphasis is on how company activities affect consumers in North Carolina. The MCHB Division accomplishes its work through several types of activities: market practice examinations of companies review of document filings required of companies and data collection, analysis and reporting. The Healthcare Review Program (HCR) offers external review services, which consist of the independent medical review of a health plan denial and offers another option for resolving coverage disputes between a covered person and their insurer.

Property and Casualty Division

This Division licenses rating organizations, advisory organizations and joint underwriting associations, along with reviewing rate, rule and policy form filings made by these entities. In addition, this Division reviews the rates, rules and forms for the North Carolina Rate Bureau, North Carolina Reinsurance Facility, Beach Plan, Fair Plan and licensed property and casualty insurance companies.

State law permits insurance companies that are unlicensed to write insurance on risks in this state as "surplus lines" companies provided there is compliance with applicable statutes and rules. Surplus lines taxes are the responsibility of specially licensed agents. This Division receives and reviews the tax forms submitted by these agents.

	No. of Policies	Premium	Tax generated
2001	56,231	$214,109,734	$10,705,489
2002	49,130	$336,569,618	$16,828,482

Filings Review

Because this Division's primary responsibility is the review of forms, rules and rates, filings must be carefully analyzed. During 2001-2002, a total of 18,143 filings were reviewed.

Forms, Rules and Rates Reviewed

	Companies and Organizations
2001	8,521
2002	9,622
Total	**18,143**

Rate Deviations

Under the jurisdiction of the North Carolina Rate Bureau, state law allows companies to file rate deviations (discounts) on coverages such as private passenger automobile, homeowners, mobile homeowners and dwelling fire. A typical deviation would be lower auto insurance premiums for autos with anti-locking brakes.

New Rate Deviations (Discounts)

	HO	Dwelling/Fire	Auto	Combined Auto/HO
2001	83	6	24	0
2002	139	10	95	0

Workers Compensation

A significant number of large deductible plans and scheduled rating plans have been approved for individual companies as the market continues to remain stable and competitive. This may be attributed to the introduction of loss costs in ratemaking, use of managed care plans, implementation of drug-free workplace plans and increased use of loss control programs. For example, the number of companies filing a drug-free premium credit has increased. Credits start at 5 percent. It applies to North Carolina employers who establish a drug-free workplace, supported by drug testing.

Workers Compensation Loss Costs Filings

	NC Rate Bureau	Residual Market	Individual Company
2001	1	1	136
2002	1	1	114

Workers Compensation Rates 1985-2002

Filing Year	Rate Requested	Rate Implemented	Statewide Premium	Employer Savings
1985	12.90%	7.50%	$289,077,233	$15,610,171
1986	12.80%	5.80%	$363,134,574	$25,419,420
1987	16.80%	15.90%	$419,796,824	$3,778,171
1988	(No Filing)	(No Filing)	(No Filing)	(No Filing)
1989	16.80%	9.00%	$509,210,148	$39,718,392
1990	29.30%	18.90%	$541,485,184	$56,314,459
1991	41.80%	15.80%	$575,129,570	$149,533,688
1992	40.30%	33.00%	$650,405,437	$47,479,597
1993	15.5	9.30%	$865,000,000	$53,630,000
1994	(No Filing)	(No Filing)	(No Filing)	(No Filing)
1995	-15.00%	-15.00%	$603,000,000	$92,259,000
1996	-14.00%	-14.00%	$511,000,000	$70,000,000
1997	-13.70%	-13.70%	$559,055,900	$0
1998	-1.10%	-1.10%	$551,425,191	$0
1999	3.40%	0.00%	$719,538,435	$24,464,307
2000	4.60%	4.60%	$719,538,435	$0
2001	-1.40%	-1.40%	$711,235,000	$0
2002	0.00%	0.00%	$737,133,000	$0

Private Passenger Auto Rates 1984-2002

Rate Effective Date	Rate Requested	Rate Ordered	Consumer Savings
March 1, 1985	4.1%	0.0%	$23,404,824
January 1, 1986	20.8%	10.4%	$69,767,852
July 15, 1987	12.2%	1.0%	$98,010,197
April 1, 1988	4.1%	0.7%	$36,525,296
January 1, 1989	6.4%	4.3%	$23,917,914
March 1, 1990	4.2%	-5.9%	$127,768,278
March 1, 1991	9.6%	4.1%	$77,400,316
June 1, 1992	9.4%	4.4%	$82,868,259
February 1, 1993	-4.2%	-6.0%	$28,537,120
February 1, 1994	(No Filing)	-6.0%	$28,537,120
January 1, 1995	17.7%	-8.5%	$486,800,438
January 1, 1996	13.8%	-8.5%	$412,460,037
December 1, 1996	6.1%	5.5%	$4,257,307
November 1, 1997	5.5%	0.0%	$140,349,969
November 1, 1998	7.2%	0.0%	$195,001,681
November 1, 1999	(No Filing)	0.0%	$195,001,681
September 1, 2000	-5.0%	-9.3%	$124,369,047
April 1, 2002	10.6%	-13.0%	$695,310,174
October 1, 2002	5.9%	-17.8%	N/A
		Total	$2,850,287,510

North Carolina Insurance Underwriting Association (Beach Plan)

Beach Policies Only				
Year	Premiums	% of Change	Policies Issued	% of Change
10/01/00-9/30/01	$25,895,253.00	N/A	27,156	N/A
10/01/01-9/30/02	$27,413,490.00	6%	28,444	5%

Wind and Hail Policies Only (Beach Area)				
Year	Premiums	% of Change	Policies Issued	% of Change
10/01/00-9/30/01	$18,836,985.00	N/A	14,338	N/A
10/01/01-9/30/02	$23,000,641.00	22%	15,550	8%

Wind and Hail Policies Only (Coastal Area)				
Year	Premiums	% of Change	Policies Issued	% of Change
10/01/00-9/30/01	$7,983,602.00	N/A	11,346	N/A
10/01/01-9/30/02	$10,903,841.00	37%	14,090	24%

Total Beach Plan				
Year	Premiums	% of Change	Policies Issued	% of Change
10/01/00-9/30/01	$52,715,840.00	N/A	52,840	N/A
10/01/01-9/30/02	$61,317,972.00	16%	58,084	10%

Other Significant Issues this Biennium

FACTS ABOUT INSURANCE FOR LOSSES DUE TO TERRORISM

Background

- Prior to September 11, 2001 most property and liability insurance policies did not address the issue of terrorism. Many policies did provide exclusions for war, civil war, warlike action by a military force, insurrection, rebellion, revolution, and usurped power. But nothing about terrorism thus the possibility of coverage.
- Immediately following the terrorists' attacks of September 11, most insurance companies filed exclusions to limit their liability from a terrorist event. Some of these exclusions were very definitive as to what constituted terrorism and others were quite broad.

- Because most insurance companies were not willing to insure commercial properties for terrorist events, a movement began to provide some type of federal insurance or reinsurance to provide the coverage. There were concerns that financial institutions would not provide loans to large projects without protection against the possibility of a terrorist event. The lack of coverage could impact our economic growth.
- On November 26, 2002 President Bush signed the Terrorism Risk Insurance Act of 2002 (TRIA). The act provided a federal backstop for certain acts of terrorism through a temporary federal program. Insurance companies will share the terrorism exposure with the federal government. The Secretary of the Treasury in conjunction with the Secretary of State and the Attorney General will certify whether a specific event was an act of terrorism covered under this Act. The act nullified then in-force terrorism exclusions approved by the various states. Companies now must insure against "certified" terrorist events and may offer optional coverage for "non-certified" acts of terrorism.

Coverage and Allowed Exclusions

- In the event of an act of terrorism, the Secretary of Treasury would have to determine if that event met the requirements of TRIA. If so, then the insurance industry and the federal government would share in the losses and individual commercial properties would be protected. The policyholder would receive compensation from the insurance company who would be reimbursed by the federal government.
- In the event of an act of terrorism that was not certified as covered under the federal law, then there would be no absolute coverage. Coverage would hinge upon the insurance contract that might (or might not) exclude terrorism. Property owners would have to rely upon their own policies that may not provide any coverage.
- The TRIA was for commercial property only. In North Carolina, personal lines policies such as homeowners do not have terrorism exclusions. That means if your residence was damaged or destroyed as the result of a terrorist act, your insurance company could not rely upon the fact that it was a terrorist act to deny coverage.
- Workers compensation in most states does not exclude war or terrorism. Workers compensation has the potential to create a catastrophic loss in the event of a terrorist act. Workers compensation is included in the TRIA, so losses may not be excluded.

Medical Malpractice in North Carolina

North Carolina has just been added to the list of states that are experiencing a crisis in medical malpractice insurance. This was indicated in the *News and Observer* in articles published on March 3 and March 4, 2003. There are 17 other states that are on the list developed by the American Medical Association. We are determining the criteria used to declare states in crisis condition.

At this time, the Property and Casualty Division is working with the Actuarial Division to develop our own database on Medical Malpractice premiums. This database should allow us to look at trends in claim costs in North Carolina for leading insurers and look at the overall rate level adequacy in the state; and we hope to encourage the companies to use this database to stabilize rate changes in the state. Also, we are currently surveying other states to compare North Carolina premiums for the same types of doctors and hospitals to the premiums paid in those states. This is to determine where North Carolina stands in the nation. We are undertaking these activities in addition to the handling of rate and form filings that are submitted by the companies.

The DOI's Work on Medical Malpractice in North Carolina

The DOI will review the filings for premiums and policy forms submitted by medical malpractice insurers.

The DOI will prepare a comparison of premiums by doctor class, for over 100 classes (from family practice to ob/gyn's) for the leading insurers. This comparison will provide useful information on premium levels. Comparing the current charts to previous charts makes it possible to compare premiums over time. The comparison will be updated several times a year.

The DOI will create a huge database to study trends in claim costs, and rate level adequacy (whether premiums charged are reasonable, possibly too high, or possibly too low). All leading insurers will contribute. The database will cover doctors as well as hospitals and health care facilities.

The DOI will compare premium charges for doctors and hospitals in North Carolina to other states. This comparison will indicate where North Carolina premiums rank.

Life and Health Division

The 2001-2002 biennium has been a period of steady activity for this Division.

Health Insurance Issues

The Division oversaw health insurers' implementation of the Patient Bill of Rights legislation since numerous new and revised laws required insurers in major medical market to submit revised forms for approval.

An alarming issue North Carolina faces is the decline of competition in the individual major medical market. In 2002, North Carolina had two more insurers pull out of the individual

major medical market – leaving just 16 companies in that market segment, not all of which are actively marketing new business. Individuals that had coverage terminated would be required to qualify for replacement coverage with another insurer and were subject to potential rate increases due to health status.

Life Insurance Issues

New life insurance products continued to be developed during this biennium as this product is increasingly being sold as an investment, rather than strictly as a method of protecting beneficiaries. Life insurance companies are developing policies, which can compete with other investment vehicles, including annuities. The increasing entry of banks into the sale of insurance is fundamentally changing the way in which states and the federal government regulate insurance and banking.

The Division implemented the Viatical Settlements Act which requires licensure of companies who purchase life insurance policies from individuals selling their life insurance.

Form and Rate Filings

Nationally, insurers are calling for state insurance departments to speed up the review process for rates and policy forms, as well as achieve a higher level of uniformity from state to state. These requests are valid with respect to the insurer's need to be able to compete in a national market and in an industry that has changed because of Congress' financial modernization efforts.

The Division has worked steadily to speed up its review process during the 2001-2002 biennium and to make the rules by which products are reviewed more understandable for filers. The Division published a *Filer's Guide* as well as checklists which are found on the Department's Web site. These resources provide a comprehensive overview of the statutes and rules applied by the Division in reviewing the insurance products it regulates.

In addition, during 2002, the Division expanded the use of a national electronic filing system developed by the National Association of Insurance Commissioners (NAIC) known as SERFF. The system enables a filer to electronically submit a product for review at a central site, which transmits it to all states in which it will be sold.

The Division continued to refine its internal database system to enhance the filing process for both external and internal users. The focus for this biennium was to enhance the filing process using existing electronic software programs external users would normally have. The process allows filers to submit forms electronically. Internal users communicate electronically with filers. The end result is an improved speed to market for the industry and a reduction in paper storage needs. Also worth noting is the ability for public viewing of filings via the internet.

The Division reviewed complex form and rate filings during the biennium. New products, many of which contain innovative and complex provisions, were submitted to the Life and Health Division analysts for review. Despite the complexity and volume of filings, the average response time to review a filing was 16 days.

Life and Health Form and Rate Filings

	Forms Filed	Rates Filed	Total Filed
2001	15,304	370	15,674
2002	13,666	752	14,418

Third Party Administrator Licenses

	Issued	Registered
2001	168	55
2002	162	60

Viatical Settlement Providers Licenses

	Issued
2001	0
2002	4

Seniors' Health Insurance Information Program

The Seniors' Health Insurance Information Program (SHIIP), a division of the North Carolina Department of Insurance, provides health insurance information counseling and assistance to Medicare beneficiaries and/or family members in North Carolina. The program is coordinated in each county through an existing human service agency such as a Council on Aging office, a Senior Center, or a Cooperative Extension office. These agencies serve as sponsors and provide important continuity, an available point of access and are models for interagency cooperation. Currently there are 105 SHIIP sponsors in our state. SHIIP was established in 1986 in response to an increased number of calls, letters and complaints from older North Carolinians confused by their health insurance options. Those persons who utilize the program more frequently are typically seniors, disabled individuals and caregivers or adult children.

The activities and duties performed by SHIIP provide a valuable service to the state's senior population. SHIIP's primary objective is to educate the public on seniors' health insurance concentrating on Medicare, Medicare supplements, Medicare+Choice and Long-Term Care insurance. The services offered by SHIIP are accomplished by training volunteer counselors in all 100 counties of North Carolina to educate and counsel their peers on seniors' health

insurance, operation of a statewide toll-free line from the Raleigh SHIIP office and developing educational materials to consumers.

Major Initiatives and Accomplishments

- Currently SHIIP has 983 volunteer counselors and 119 volunteer county coordinators. From January 2001 to December 2002, SHIIP staff trained 334 volunteers in the basic curriculum and certified 180 volunteers as long-term care insurance specialists.
- The SHIIP toll free counseling service answered 46,486 calls from January 2001 through December 2002, averaging 2,000 calls a month.
- SHIIP counselors spent 9,583 hours in volunteer counseling sessions and held 10,962 individual counseling sessions during the period.
- SHIIP staff conducted 415 educational seminars, health fairs and speaking engagements during this period.
- To promote SHIIP's services to the public, 150,038 direct mailers were sent to individuals turning 65 in 2001 – 2002. In addition 13,392 mailings were sent out of the SHIIP office to individuals based on their request for materials. These requests included informational brochures, *Medicare Supplement Comparison Guides* and the NAIC's *Guide to Long-Term Care Insurance Information*.
- SHIIP creates a number of consumer publications on a yearly basis including the *Medicare Supplement Comparison Guide,* the *Guide to Long-Term Care Insurance in North Carolina* and the *Road to Medicare: Planning Your Drive Toward 65*. The Division also serves as a clearinghouse for Centers for Medicare and Medicaid Services (CMS) publications.
- Each year SHIIP staff members appear on "Open Net", the statewide call-in television program produced by the Agency for Public Telecommunications.
- The North Carolina SHIIP was one of the recipients of the CMS Beneficiary Services Certificate of Merit award in July 2000. This award reflected success with the 1999 "Medicare and You" Van Tour.
- In August 2000 SHIIP was named as a mentor SHIIP for the Shipmates program sponsored by CMS and the National Association of State Units on Aging. NC SHIIP worked with the Alabama SHIP during 2001 to help them improve their overall service and effectiveness and to establish a volunteer network.
- SHIIP's www.ncshiip.com was established and existing website made more user friendly for customers.
- In 2001 SHIIP developed an interactive Medicare Supplement insurance premium database on the website. This database provides consumers with up-to-date information about Medicare supplement policy choices, premium costs, rate history and coverage.

- In partnership with the Division of Aging (DOA), SHIIP provided Medicare Lookout training to approximately 500 SHIIP volunteers in 2001 and conducted training in 2002 to professionals in the aging network.
- In 2001-2002 SHIIP began the development of statewide partnership with the public library system. Presently there is a *SHIIP Resource Guide* in 100 libraries in each county seat.
- SHIIP was awarded federal funds to carry out the Medigap Monitoring Demonstration Project in NC in an effort to monitor the quality of information and service being imparted to Medicare beneficiaries in the state by insurance companies.
- In partnership with the DOA and AARP, SHIIP co-produced a brochure on Long-Term care, *It's About You, Your Children, and Your Parents; Planning Today for Tommorrow*.

Major Activities and/or Goals

- SHIIP will make every effort to inform the citizens of North Carolina about the program's services. This includes Medicare beneficiaries, caregivers, adult children of aging parents, aging network professionals, medical providers, etc.
- Efforts will continue to inform the public about long-term care funding and payment options. Employers and baby boomers are among the groups identified as important to reach.
- SHIIP will stand ready to respond to Medicare beneficiaries on Medicare + Choice terminations and provide materials and information if necessary.
- SHIIP plans to continue efforts with regard to the Medicare Lookout Program.
- SHIIP will focus on strategies to reach the Hispanic, African American and disabled populations.
- SHIIP will continue to partner and network with public libraries in the state to include activities such as using the library as counseling sites, training sites and resource material clearinghouses.
- SHIIP will continue efforts to promote computer use and Internet access by seniors.
- Special efforts will be made to respond to persons who have specific needs or concerns; in particular, those who have high prescription drug costs as well as disabilities.

Market Examinations Division

The Market Examinations Division monitors insurance company market practices, especially as they affect consumers. The examination methods employed by the Division are based on a program developed by the National Association of Insurance Commissioners (NAIC). By agreeing to pilot the NAIC program over 25 years ago, North Carolina became the first state in the nation to conduct market examinations along the lines promulgated by the NAIC.

The Division places a priority on automating examination processes. The Division uses audit command language software for 100 percent of the testing on property and casualty examinations. Additionally, this is an ongoing project for life and health examinations. These combined automation efforts result in increased review of company operations, allowing examiners to spend more time on potential problem areas rather than "routine" tasks, and also result in substantial savings to the public since more work can be done in our offices rather than at company offices.

The Division monitors the activities of foreign and domestic insurance carriers operating in North Carolina and is capable of responding to special problems or concerns related to company practices.

Examinations are conducted on a regular rotation so that all companies domiciled in North Carolina and dominant foreign companies are examined on a five-year cycle.

Examinations are divided into three categories: general, compliance and target. The three types of examinations require distinct protocols to ensure that companies are treated fairly and without prejudice or unfair discrimination.

Managed Care and Health Benefits Division

The Managed Care and Health Benefits Division monitors and regulates the activities of managed care entities, including health maintenance organizations (HMOs); preferred provider organization benefit plans (PPOs); managed care indemnity health insurers and multiple employer welfare arrangements (MEWAs). The Division's emphasis is on how company activities affect consumers in North Carolina.

Managed care introduced to the health care delivery system unique company, consumer and provider obligations not inherent in traditional indemnity insurance. In order to deliver the cost controls demanded by purchasers and consumers, managed care organizations apply a broad array of policies and techniques that have tremendous impact on consumers. These include requirements relating to provider networks, as well as programs and policies that insureds and their treating providers must follow as a condition of coverage for services.

The techniques employed by managed care plans to promote quality care and eliminate unnecessary care can also result in the inappropriate denial of coverage for services promised under an insured's policy. Thus, the Department's traditional regulatory oversight of company marketing practices, treatment of policyholders and solvency are expanded to include those systems that are unique to managed care plans.

The Division has played a pivotal role in the development of a comprehensive regulatory framework for managed care plans in North Carolina. In October 1996, regulations were implemented to establish industry standards and departmental oversight of plans' health care provider network arrangements and HMO's Quality Management Programs.

In 1997, the Department developed legislation that strengthened requirements for plans' Utilization Review Programs, established a standardized two-step process under which all health plans must consider plan member appeals and grievances, defined plan requirements for making coverage determinations, strengthened the Department's ability to take action against non-compliant HMOsand greatly expanded the amount and types of information to be provided by health insurers to current and prospective insureds. In 2001, the Division implemented the new prompt claim payment law and, in 2002, played a key role in drafting and subsequently implementing the Managed Care Patients Bill of Rights. Through these and other achievements, North Carolina consumers now enjoy one of the most comprehensive sets of managed care protections to be found in any state, exceeding those proposed in federal managed care reform legislation.

The Division accomplishes its work through several types of activities, including market practice examinations of companies, review of company filings and the collection and analysis of data. These and other activities are discussed below.

The Division's examination program provides for examination of each HMO on at least a triennial basis, and includes review of the non-financial aspects of company operations, including management and control, provider network development and credentialing, utilization management programs, quality management activities, third-party contracting arrangements, marketing, member services and claims payment, and underwriting practices. Examinations last two to eight weeks, depending on their type and areas covered.

General examinations entail comprehensive review of policies, procedures and practices in all operational areas of the company. Compliance examinations are designed to ascertain whether the company has taken corrective action to address problems found during the previous general examination.

The Division is also responsible for reviewing and coordinating filings for HMO certificates of authority and for modifications to HMO licensed service areas and other operational modifications. These reviews are conducted in consultation with others in the Department, including the Life and Health Division, Actuarial Division and Financial Evaluations Division, and include review of applicant companies' planned operations, as well as an on-site pre-licensure examination. When resources permit, a licensure follow-up examination is conducted approximately 12 months after a new HMO has been licensed. The purpose of follow-up examinations is to ensure that actual operations are in accordance with that proposed in the licensure application, as well as to review company policies and procedures relating to areas addressed in law or regulations.

HMO Examinations and Licensure Summary

Year	HMOs	General Exams	Compliance Exams	Pre-Licensure Exams	Follow-up Exams	Target Exams
2001	20	6	1	1	1	1
2002	18	1	1	0	1	0

Beginning in 1999, the Division added PPO benefit plans to the examination program. The examination of PPOs includes review of the managed care aspects of the company's operations, including provider networks, utilization management, member services, claims and marketing. The initial round of PPO examinations are conducted as a learning tool for companies, enabling them to bring their operations into compliance with all applicable laws. In 2001, the Division completed one PPO examination. During 2002, seven PPOs were examined.

In addition to routine market examinations, the division from time to time conducts other reviews of company practices, both to assess compliance as well as to investigate suspected noncompliance. One of these reviews was completed in 2002, to ascertain industry compliance with the new Prompt Pay law that went into effect in July 2001.This resulted in the Division completing reviews of the claims processing activities of 12 HMOs and 11 PPOs.

The review of form health care provider contracts used by HMOs and managed care indemnity health insurers is performed to establish compliance with regulations pertaining to carriers' responsibilities for arranging the provider networks to which insureds are directed and to determine compliance with regulations governing the utilization review process and the member appeal process. The review of annual PPO filings and PPO application filings also permits evaluation of carriers' written policies and procedures regarding provider networks, utilization review programs and member appeals processes.

Managed Care Filings

Year	Provider Form Contracts	PPO Filings
2001	307	39
2002	512	37

In addition to form filings, the Division also receives and handles all complaints against health insurers filed by health care providers. In 2001, 333 complaints were filed with the Division; 520 complaints were filed in 2002, representing a 53 percent increase.

Since 1996, the Division has produced an annual Status Report and Analysis of Activity for HMOs that includes information on plan enrollment trends and plan penetration in the consumer market. The Division expanded the 2000 Report to include data on PPOs and

additional data on HMOs. The Status Report and Analysis of Activity for HMOs and PPOs was published in 2001 and 2002.

Legislation enacted in 1997 enabled the Division to collect data in a uniform format from HMOs and PPOs, providing consistent and comprehensive information to better inform the Department, the industry and consumers on the practices of these benefit plans. Beginning in 1999, HMO and PPO carriers must report on March 1 of each year summary information on:

- grievances and noncertification appeals
- changes in enrollment
- provider turnover
- provider availability and accessibility
- utilization and utilization review activity
- provider compensation methods
- costs
- HEDIS® outcomes measures

In order to make this information available in a user-friendly way to the public, the Division began publishing an annual consumer guide to managed care. In 1999, the Division published two consumer guides to managed care, one incorporated the non-HEDIS data along with general information on managed care, and the second guide contained the HEDIS® data, which is not available until later in the year. In 2000, the two guides were combined into one, with additional performance data included. The Division continued to publish updated consumer guides in 2001 and 2002.

Since laws were enacted to license multiple employer welfare arrangements (MEWAs), 11 licenses have been issued. The Division reviews MEWA initial and annual license applications, coordinating their approval with other divisions, similar to the coordinated review of HMO certificates of authority.

MEWAs Licensed

Year	Licensed	Terminated
1993	3	
1994	2	
1995	0	
1996	1	
1997	0	
1998	1	1
1999	1	3
2000	2	
2001	0	
2002	1	1
Total	Licensed - 7	

Healthcare Review Program

External review is the independent medical review of a health plan denial and offers another option for resolving coverage disputes between a covered person and his or her insurer. In North Carolina, external review is available to covered persons when their insurer denies coverage for services on the grounds that they are not medically necessary. This type of denial is referred to as a "noncertification decision." Denials for cosmetic or experimental services may be eligible for external review, depending on the specific circumstances of a case. The law applies to persons covered under fully insured health benefit plans, the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan and the Health Insurance Program for Children (CHIP).

To be accepted for external review, a covered person must meet eligibility requirements. A request is made directly to the HCR Program, where program staff is required to review each request for completeness and eligibility. In order to do this, information is received from the insurer within statutorily required time frames and, if needed, additional information is requested from the covered person. Once accepted for external review, the case is assigned to an independent review organization (IRO) for clinical review. The IRO issues a determination within the statutorily required time frame for the specific request (within 45 days of the HCR Program's receipt of a request for a standard review and four days for an expedited review). The Program monitors compliance with the statutory and contractual requirements of the parties involved in external review.

Additionally, the HCR Program provides consumer counseling with respect to utilization review and insurers' internal appeal and grievance processes.

HCR Program Development Activities

- Law requires that the program contract with qualified independent review organizations to provide the clinical review of each case. The program is currently contracted with five IROs, having completed the RFP and selection process as required under NCGS 58-50-85.

- Data tracking systems have been developed within an existing Department program to assure that HCR would capture all external review activity for analysis and reporting requirements.

- Consumer information has been developed and made available to the public through the Department's Web site. A request form, instructions for completing a request form, FAQs and a brochure entitled "A Consumer's Guide to External Review" are available for consumers on the Web site.

- Information and education regarding external review has been made available for the insurance industry. HCR staff meets with insurers to educate them regarding their requirements relating to external review.

- The Program has contracted with two medical professionals to fulfill the statutory obligation under NCGS 58-50-82, for medical advice relating to the handling of a request for an expedited external review.

External Review Activity

During the first six months of this year, the HCR Program received 59 requests for external review. Nineteen cases were eligible and accepted for review, with 16 cases having an outcome as of Dec. 31, 2002. Two of these cases were reversed by the insurer prior to being assigned to an IRO, seven cases had the insurer's decision upheld by the IRO and seven cases were overturned. Overall, the majority of cases for the first six months of operations (56 percent) were resolved in favor of the consumer.

Consumer Counseling Activity

Since assuming the responsibility for counseling consumers regarding utilization review and the internal appeals and grievance processes offered by insurers, HCR Program staff has provided counseling on 148 cases.

Program Activity Measures

Activity Measure	**July 1 – December 31, 2002**
External Review	
Number Received & Evaluated for Eligibility	59
Number Accepted for External Review	19
Number of Accepted Cases Closed	16
Consumer Counseling	
Number of Cases	148
Consumer Calls	
Total Calls Answered (External Review and Consumer Counseling)	593

Public Services Group

The Public Services Group is comprised of the Agent Services, Consumer Services and the Investigations Division.

The Agent Services Division regulates all licensed agents, brokers, limited representatives, appraisers, adjusters, premium finance companies, collection agencies, motor clubs, bail bondsmen, surety agents and bail bond runners authorized to do business in North Carolina. This includes pre-licensing education, continuing education, agency examinations and administrative actions.

The Consumer Services Division assists North Carolina consumers by answering insurance questions and resolving their insurance problems. A staff of consumer specialists advises and acquaints consumers with courses of action they may pursue to resolve their particular insurance problem.

The Investigations Division conducts criminal investigations of insurance-related crimes committed by policyholders, claimants, insurance producers and insurance companies. The division also conducts criminal investigations of bail bonds, collection agency and premium finance industries.

Consumer Services Division

The technical and complex nature of insurance generates a multitude of questions from the consuming public and from many segments of the insurance industry itself. The Department's Consumer Services Division handles questions touching upon all types of insurance products. Each year this Division provides valuable assistance to a broad array of our citizens.

During the 2001-2002 biennium, Division staff handled just under 100,700 consumer calls in 2001 and over 105,000 in 2002. Each year the staff processed more than 10,000 written consumer complaints. A computerized data format allows for continuous updates and changes on each complaint file.

Such computerized complaint handling and the accumulation of related information offers important indications of how well departmental regulatory measures are affecting insurance market practices.

During the 2001-2002 biennium, the Consumer Services staff was involved and active in a number of areas.

During 2002, the Consumer Services Division was able to assist the citizens of North Carolina by recouping some $10,584,541.56 for claims/underwriting concerns. This

number reflects an increase of approximately 19.2 percent over the 2001 number. Assistance for the years, 2001, and 2002 is referenced below:

2001	2002
$8,882,132.70	$10,584,541.56

The division experienced an increase in the number of inquiries (5 percent) and the number of complaints (15 percent). Additionally, inquiries/complaints received via the Web site increased by 52 percent. Walk-in traffic for the division increased 11 percent. Numbers in this category are referenced below:

	2001	2002
Inquiries:	**100,633**	**105,350**
Life & Health	49,051	51,177
Property & Casualty	51,582	54,173
Complaints:	**10,286**	**11,778**
Life & Health	6,082	6,022
Property & Casualty	4,204	5,756

	2001	2002
Internet:	**2,670**	**4,047**
Life & Health	1,227	1,733
Property & Casualty	1,443	2,314
Receptionist/Switchboard:	**77,998**	**74,254**
Walk-in Visitors	238	264
Calls through the Switchboard	77,760	73,990

The breakdown of the complaints is as follows:

Life & Health:	2001	2002
Life & Annuity	20%	23%
Accident & Health	80%	77%
HMOs*	15%	9%

Property and Casualty:	2001	2002
Automobile	66%	62%
Homeowner	14%	15%
Other	20%	23%

**Percentages for HMOs are a subset of the Accident and Health percentages.*

The division mailed 11,015 publications during the 2002 calendar year. The top four publications mailed were:

It Pays to be a Safe Driver	5,023
Consumer's Guide to Health Insurance	1,079
Consumer's Guide to Auto Insurance	733
State Continuation	274

In 2001-2002, the Division's "Consumer" portion of the department's Web site continued to be significantly enhanced with the addition of new and existing brochures, complaint ratios and an automobile rating mechanism. The addition of an interactive online complaint form and an e-mail address for inquiries has provided consumers with instant access to the Consumer Services Division.

The Division serves as a significant front line service organization. Consumer Services staff continually strive to improve the quality of their service to consumers through professional training and continuing education. Additionally, the "hotline" section was recently reorganized to enable specialization between the Property and Casualty and the Life and Health lines of insurance. As such, the staff can field more complex inquiries in their lines of expertise and provide answers thereto with as much detail as is needed to properly answer consumer questions.

Agent Services Division

The Agent Services Division regulates all licensed agents, brokers, limited representatives, appraisers, adjusters, premium finance companies, collection agencies, motor clubs, bail bondsmen, surety agents and bail bond runners authorized to do business in North Carolina. This includes pre-licensing education, continuing education, agency examinations and administrative actions.

The division ended the 2001 calendar year with a restructuring due to the 2001 merger with the Special Services Division. The rationale for this merger was to separate the

regulatory function from licensee matters involving criminal conduct and requiring investigation by Sworn Law Enforcement Officers. All Law Enforcement Officers were transferred to the Investigations Division.

The division revamped procedures associated with unpaid surety judgements effective July 1, 2002. A decrease from the 2001 numbers was noted in liquidation activities associated with professional bail bondsmen and surety companies.

Securities Liquidated:	**2001**	**2002**
Professional	$316,109.64	$187,254.22
Surety	$2,953,039.52	$2,104,305.05

The division has automated all files and licensure information associated with motor clubs. Automation relative to premium finance companies was also accomplished in 2002.

	2001	**2002**
Licensing:		
Appointments	171,383	166,993
Terminations	106,539	128,191
Lifetime Licenses	24,751	26,576
Limited Representatives	4,953	3,767
Brokers	449	438
Adjuster/Appraiser	4,154	4,246
Professional Bail Bondsmen	217	188
Bail Bond Runners	321	280
Surety Agents	692	775
Surplus Lines/Purchasing Groups	52	84
Corporations/Partnerships	925	968
Motor Clubs (B/O)	490	445
Collection Agencies	454	569
Premium Finance Companies	226	244
Continuing Education:		
CE Courses Approved	997	1,028
Financial:		
Insurance Related Revenues		$23,066,804.25

Non-insurance Revenues		$556,744.00
Regulatory:		
CE Courses Monitored	175	83
Agency Examinations	174	202

	2001	2002
Complaints:		
Insurance Related	159	179
Non-Insurance	226	221
Conferences	82	84
Licenses Denied	75	91
Licenses Revoked	10	0
Licenses Suspended	7	9
Licenses Surrendered	43	27
Licenses (non-renewed)	0	90
Administrative Hearings	12	10
Monetary Penalties	$7,000.00	$11,000.00
Notices of Deficiencies	4	22

The mandatory requirement for electronic agent appointments and terminations was implemented in 2002.

The division handled 53,527 calls in 2002 (an increase of 28.9% over the 2001 number of 41,534).

On an annual basis the Division hosts state licensing examination item-writing sessions for property/casualty and life/health. The purpose of the item-writing sessions is to keep state licensing examination questions current. The course catalog is available on the Division's Web site, www.ncdoi.com, as is the Department Newsletter, which is published twice a year.

Investigations Division

The Investigations Division conducts criminal investigations of insurance-related crimes committed by policyholders, claimants, insurance producers and insurance companies. The division also conducts criminal investigations of bail bonding, motor club, collection agency and premium finance industries.

During 2001-2002, case referrals and allegations of fraud submitted for investigation by this Division have remained at a consistently high level. This, of course, is reflective of the problem of insurance fraud itself as well as indicative of the steady increase of fraud awareness on the part of both the consumer and the industry. In addition, over the last two years, the Division has made a concerted effort to continually assure that quality investigations are being pursued so that the North Carolina consumer is most effectively served. This commitment to quality has resulted not only in impressive statistical achievement, but, also, in a more efficient and effective operation.

	2001	2001
Incoming Referrals:		
Industry	377	361
NICB	543	612
Government Agencies	12	21
Citizen Complaints	169	164
Law Enforcement	17	23
DOI Divisions	37	73
Outgoing Referrals:		
Law Enforcement	2	5
Administrative Agencies	42	71
DOI Divisions	57	99
Investigations Assigned:	151	317
Investigations Closed:	53	131
Active Investigations:	275	378

Thirty-five convictions were achieved in 2002 (an increase of 29.6 percent over the 2001 numbers). The 35 convictions are the most ever for the division. Cases worked involved Professional Employer Organizations (PEOs), unauthorized insurance, chiropractor fraud, viatical fraud, staged accidents, embezzlement and fraud associated with insurance activity (FEMA and claim adjudication), and certain bail bonding related matters.

Successful case resolutions increased 18.8 percent during 2002 to a total of 86. The dollar amounts associated with these successful resolutions were less in 2002 as numbers relative to the 2001 cases referenced the viatical fraud initiatives that resulted in extremely significant fines, savings, and recoveries. Numbers for 2001 and 2002 are listed below:

	2001	**2002**
Successful Case Resolutions	**(73) $25,724,367.47**	**(86) $5,584,046.79**
Convictions	(27) $12,691.855.73	(35) $3,416,635.09
Monetary Recoveries	(46) $13,032,511.74	(51) $2,167,411.70

A grant in the amount of $75,000 was awarded to the division from the Governor's Crime Commission. The division utilized these funds to purchase the Aithent Case Management System/Database.

The division head and others within the division, working within the NAIC Antifraud Working Group, contributed significantly to the development of a Uniform Insurance Crime Reporting form. Once adopted by the NAIC, the form will be placed on the Web-sites of every state DOI so that the industry can report fraud uniformly across the country. Additionally, the division head was responsible for training activity associated with regulators and the industry, both in North Carolina and elsewhere. Fraud Director's roundtables, viatical fraud, PEO fraud, unauthorized entities, agent embezzlement, and other topics have been taught by the division head and certain investigators at NAIC, North Carolina Association of Special Investigators, and North Carolina Insurance Crime Information Exchange sponsored training.

Insurance fraud related cases have been and are being addressed in the areas of health care, workers' compensation, unauthorized insurers, Multiple Employers Welfare Arrangements, employee leasing companies, surety bonds, and the traditional claimant and agent fraud covering all lines of insurance.

The Division remains a vital entity of the North Carolina Department of Insurance, often assisting other internal regulatory divisions in the identification of subjects, schemes, and entities requiring attention. Investigators regularly testify at departmental hearings and assist in the preparation of new or amended anti-fraud legislation.

Personnel of this Division are active and respected members of industry anti-fraud organizations, law enforcement related organizations, and task forces throughout the state. Memberships include the North Carolina Insurance and Health Care Fraud Task Force, the North Carolina Insurance Crime Information Exchange, North Carolina Police Executives Association, the National Association of Insurance Commissioners Anti-Fraud Task Force, the International Association of Special Investigations Units, and the North Carolina Sheriff's Association. Division personnel regularly receive insurance and law enforcement related training and often are called upon to represent the Department by giving presentations and training to various groups in North Carolina and across the nation.

The Investigations Division stands ready to meet the many challenges that the future holds. As the very infrastructure of insurance methods and operations radically change, so will the methods and operations of the insurance fraudster. Internet based insurance transactions and electronic licensing/appointing functions unveil an entire universe of illicit opportunities to those intent on cheating the system. Banks and other financial institutions are entering the insurance market and insurance companies are diversifying as well. This will broaden the scope of potential fraud into a multitude of areas and will require a coordinated

and uniform response from regulators, law enforcement, and the industry. The Investigations Division is committed to meeting these challenges now and in the future.

Legislative Action

The passing of the Producer Licensing Model Act and subsequent revisions to the Act by the NAIC required the division to create a personal lines license. Industry requested this license, as some of the company producers never sold commercial lines of insurance and had no need for a Property and Casualty license.

Office of the General Counsel

This organizational unit provides internal legal advice to all divisions of the Department. The Department's General Counsel also acts as liaison with the Attorney General. The office coordinates hearings on a wide variety of administrative matters and prepares complex orders and memoranda for the Commissioner. The General Counsel serves as the Department's primary hearing officer having final agency decision authority, and reviews all Department contracts with suppliers and consultants.

General Counsel

The General Counsel gives legal direction and counsel to the Commissioner and all members of the Department in areas of law relating to the entities regulated by the Department, which include: the insurance industry, the bailbond industry, collection agencies, premium finance companies and building inspectors. The General Counsel also provides advice to the Department on a wide variety of procedural matters, including the Administrative Procedures Act and Rules of Civil Procedure. Additionally, the General Counsel provides legal advice pertinent to the running of the Department itself, such as advice on personnel matters, and the public records law.

Between January 1999 and December 2000, the General Counsel's office responded to 579 legal service requests from Department personnel without the involvement of the Attorney General's office. Further, the General Counsel serves as the Department's primary hearing officer for a wide variety of administrative hearings under Article 3A of Chapter 150 B of the North Carolina General Statutes. During the 1999-2000 Biennium the General Counsel's office has been involved in over 119 administrative hearings.

The General Counsel evaluates the effectiveness of the work of the Attorney General in the context of providing advisory opinions and handling administrative proceedings and other litigation. The General Counsel also litigates cases at the instruction of the Commissioner of Insurance when the Department of Justice has conflicts with representing the Department of Insurance.

Ratemaking Litigation

During the 1999-2000 Biennium, Rate Counsel continued to be closely involved in several pieces of significant litigation involving ratemaking for lines of insurance under the jurisdiction of the North Carolina Rate Bureau ("Rate Bureau"). In March 2000, all pending litigation was finally settled.

1. 1994 Auto Rate Case

In September 1994, the Commissioner disapproved an auto insurance filing submitted by the Rate Bureau on Feb. 1, 1994. The Commissioner's 1994 order was subsequently

appealed to the North Carolina Court of Appeals, which rendered its decision in the matter in December 1996, affirming in part, reversing in part and remanding the case to the Commissioner for a recalculation of the profit provisions and for a clarification on the issues of dividends and deviations and expense trends.

The Commissioner issued a Remand Order on Sept. 10, 1997, which further decreased the overall rates established by the Commissioner in the original Order and further ordered that the escrow amounts be increased pending appeal of the case. The Remand Order was also appealed to the Court of Appeals and a decision was rendered on Dec. 29, 1998, affirming the Commissioner's clarification of dividends and deviations and expense trends and remanding the case to the Commissioner for a recalculation of the profit provisions.

In January 1999, Rate Counsel petitioned the North Carolina Supreme Court for a review of the Court of Appeals' decision to remand the 1994 case to the Commissioner for a recalculation of the profit provision. The Rate Bureau likewise petitioned the Supreme Court for a review of the Court of Appeals' decision on the dividends and deviations issue in this same case. The Supreme Court accepted the case for the limited purpose of asking the Court of Appeals to review its decision to ensure that it complied with the Supreme Court's June 2000 decision in the 1996 rate case. The Court of Appeals subsequently affirmed its prior decision and in October 1999, the Rate Bureau petitioned the Supreme Court for further review. Rate Counsel opposed the Rate Bureau's second petition to the Supreme Court and the Supreme Court's decision on this second petition was pending at the time this case was settled in March 2000.

2. 1996 Auto Rate Case

In April 1996, the Rate Bureau submitted an auto filing which satisfied the 1995 and 1996 filing requirements. The Department held a six-week hearing and the Commissioner issued his final Order in October 1996 disapproving the filing.

The Rate Bureau appealed the Commissioner's order to the Court of Appeals, which rendered its decision on June 16, 1998 affirming in part, reversing in part and remanding the case to the Commissioner for recalculation of the profit provisions. The Court of Appeals' decision contained a dissent by Judge Greene, which allowed the Commissioner to appeal the profit issue to the Supreme Court as a matter of right. In addition, the Rate Bureau petitioned the Supreme Court for discretionary review of the issue of dividends and deviations; the Rate Bureau's petition was allowed on Nov. 5, 1998.

In February 1999, Rate Counsel filed two extensive briefs with the Supreme Court on the issues of profit calculation and dividends and deviations. In March 1999, Rate Counsel presented its oral argument to the Supreme Court on the pending issues. In June 1999, the Supreme Court rendered its decision affirming the Commissioner on the issue of dividends and deviations but remanding the case to the Commissioner for a recalculation of profit. The litigation of this case was pending at the time this case was settled in March 2000.

3. 1999 Auto Rate Case

In March 1999, the Rate Bureau filed for an approximate 5 percent decrease in auto rates. In August 1999, as a result of the Supreme Court's June decision on the issues of profit and dividends and deviations, the Bureau amended its filing in order to comply with the Supreme Courts's decision, but still seeking an approximate 5 percent reduction in rates. Despite the request for a decrease, the Commissioner called for a rate hearing because the Rate Bureau's methodologies were flawed and the reduction in rates should have been substantially larger. The hearing on the 1999 auto filing commenced in November 1999 and did not conclude until January 2000.

In March 2000, prior to issuance of the Commissioner's Order on the 1999 auto case, the Commissioner and the Rate Bureau settled all litigation on the 1994, 1996 and 1999 auto cases. The settlement resulted in a refund to consumers of $250 million plus approximately four years of interest at 11.5 percent per annum. The settlement also resulted in an overall reduction of auto rates of 9.25 percent through Oct. 1, 2001 (thereby effectively settling the 2000 auto rate filing, as well).

4. 1999 and 2000 Workers' Compensation Loss Cost Cases

In addition, the Commissioner settled the 1999 and 2000 Workers' Compensation cases without the necessity of a formal hearing. The 1999 case was settled for a 0 percent change in rates and the 2000 case was approved for a 4.6 percent increase in rates.

Office of State Fire Marshal

The Commissioner of Insurance has served by North Carolina General Statute since the late 1940s as the State Fire Marshal. Groundwork for this began in 1907 when the General Assembly established the "Firemen's Relief Fund," requiring the Commissioner to collect funds from insurance companies to be used for relief of distressed firefighters.

In an effort to bring more focus and visibility to this division's programs, the Office of State Fire Marshal (OSFM) was formally established within the Department of Insurance on April 1, 1998, thus replacing the former Safety Services Group. The creation of OSFM primarily involved a name change, but there continues to be some reorganization and combining of resources as the new office evolves.

OSFM is comprised of the following six divisions: Engineering and codes, Manufactured Building, Risk Management, Fire and Rescue Training and Inspections, Fire and Rescue Commission and Programs, Prevention and Grants.

OFSM administers and enforces life safety standards throughout the state, promotes risk management practices throughout government and maintains a sound insurance program for state agencies.

The Engineering Division is comprised of seven sections: code consultant, state property plan review, mechanical, home inspection, inspector certification, building code council and handicapped accessibility. This division administers the state building code and provides staff to the North Carolina Building Code Council, the North Carolina Code Official Qualifications Board and the Home Inspectors Licensing Board.

The Manufactured Building Division works to assure that construction standards for manufactured homes are maintained and that warranty obligations under state law are met. The division monitors handling of consumer complaints, licenses the makers of manufactured homes, dealers, sales representatives and set-up contractors and acts as staff for the North Carolina Manufactured Housing Board.

The Risk Management Division administers the self-insurance funds for state-owned property and vehicles, and procures from private insurance companies other types of insurance needed by the state agencies and universities. This division inspects all state-owned facilities for fire and life safety and inspects all new state-owned facilities for Electrical Code compliance. Also, the division assists local governments with property and casualty insurance programs and makes available professional liability coverages for law enforcement officers, public officials and employees of any political subdivision in the State.

This division also provides staff, administration, and research services to the Public Officers and Employees Liability Insurance Commission (POELIC).

The Fire and Rescue Commission Division serves as staff to the Fire and Rescue Commission and handles the state's voluntary certification system comprised of 16 levels and 40,000 individuals, as well as the State Fire and Rescue Incident Reporting System.

The Program Development, Prevention, and Grants Division administers the Firemen's Relief Fund, Rescue Relief Fund, assists all divisions within the OSFM with development of programs and brochures and provides direction and support for injury prevention programs statewide. The division also administers matching dollar-for-dollar grants to volunteer fire departments and rescue squads and offers fire prevention education in the public schools.

The Fire and Rescue Training and Inspection Division trains fire departments, rescue squads, and instructors to improve fire and rescue protection statewide. Through special schools, development of training programs and teaching outlines, and specialist training directed to instructors, this division provides continuous upgrade to the training of our states emergency workers. Fire department's delivery capabilities are measured and upgraded by providing initial insurance ratings for fire departments, as well as coordination for the improvement of ratings to reduce insurance costs for homeowners.

Engineering Division

North Carolina's General Statutes give the Commissioner of Insurance the responsibility of general supervision of the administration of the North Carolina State Building Codes. The codes contain regulations relating to plumbing, electrical, heating, air conditioning and fire protection systems and the construction of buildings in general. The Division meets these responsibilities by providing interpretations of code requirements and assisting local government authorities with the application of the codes. It should be noted that the building codes are developed by the North Carolina Building Code Council, not the DOI.

The Division reviews plans and specifications of new buildings for code compliance, assists with code-related educational programs and administers state examinations required for certification of city, county and state code enforcement officials.

Division staff also administers the state's accreditation program of independent inspection agencies that safety test and label electrical and mechanical equipment.

In addition to serving as an informal state code appeals agency, the Division also serves as staff to the North Carolina State Building Code Council, the North Carolina Code Officials Qualification Board and the North Carolina Home Inspectors Licensure Board.

Code Administration and Enforcement

The Division provides interpretations of the intent of the state building code to city and county inspection officials, architects, engineers, contractors, material suppliers, manufacturers, other state agencies, attorneys and the general public.

The Division is responsible for reviewing plans and specifications for large buildings. Before a permit can be secured for these buildings, a letter of compliance must be issued by this Division to the inspection department having jurisdiction.

State law requires that handicapped and disabled persons receive treatment equal to that afforded other persons. The Division has an Accessibility Section, which provides information to handicapped organizations, design and construction professionals and building owners in the application of these state laws and the building code requirements relating to accessibility. This assistance helps provide our disabled citizens with the full and free use of all buildings in the state. Accessibility regulations are currently being revised to make North Carolina Code equivalent to federal Americans with Disabilities Act regulations.

Because some buildings require special construction, technical assistance is necessary from the Division to ensure that the building is safe. Inspection assistance is also provided for structures when deterioration, fire or storms create conditions, which appear to be hazardous to life.

Engineering Division Activities

	2001	2002
Plans reviewed	2,618	2,347
Office conferences	3,639	4,712
Telephone information requests	54,509	61,458
Schools, seminars and conference participation	930	1,020
Building Code Council meetings	31	44
Qualification Board Meetings	22	25
Qualification Board complaint investigations	17	9
Inspection certification schools coordinated	199	254
Inspection certification exams administered	1,884	1,332
Inspection certification applications reviewed	4,923	4,379
Inspection certification renewed and issued	5,832	5,475
Code publication sales	$771,437.00	$1,280,296.00
Home Inspector Board meetings/hearings	27	42
Home Inspector exams administered	343	436
Home Inspector applications reviewed	239	285
Home Inspector licenses issued/renewed	1,142	1,173
Home Inspector Complaint Investigations	31	28

Division staff also serves as the State Damage Assessment Team and assists the State Office of Emergency Management during disasters.

State Building Code Council Support

The Building Code Council consists of 17 members appointed by the governor. The Council is empowered to adopt and amend the state building code, hear appeals on the interpretation of the code and approve local building regulations which are different from the state code. The Council holds regularly scheduled public hearings on the second Tuesday in March and September. Additional meetings are held by Council code committees.

State law permits the Building Code Council to provide, in circumstances deemed appropriate, programs to certify independent testing laboratories as state-accredited third-party agencies to evaluate, inspect and label factory-built manufactured buildings, and electrical and mechanical building components. Division staff administers this program.

Code Officials Qualification Board Support

This Board develops standards for the training and certification of code enforcement officials. The Division provides clerical and staff services in support of this effort. The Board is also responsible for developing training schools and state examinations for inspector certification. Some Division staff members serve as instructors; all state certification exams are administered by Division staff.

Persons certified by the Board are issued a certificate for each level and area of inspection for which they have met qualification requirements. The Division also investigates written, substantiated complaints against inspectors made to the Board, which may then schedule a hearing.

Home Inspectors Licensure Board Support

This Board was created by the General Assembly in 1994 to provide for the licensure and regulation of those who perform home inspections for compensation. This Board is composed of seven members and a designee of the Commissioner of Insurance. This Board provides for the development and maintenance of standards of practice, code of ethics, examinations, licensure, renewal and disciplinary procedures for home inspectors in North Carolina. The Division provides clerical and staff services in support of this effort. The staff provides all administrative functions for the Board including administering the examinations, issuing licenses, renewal of licenses and investigation of complaints.

Manufactured Building Division

This Division acts both as a state administrative agency under the federal Manufactured Housing Constructions and Safety Standards Act and as staff to the North Carolina Manufactured Housing Board.

The role of a state administrative agency is to monitor manufacturers' handling of consumer complaints to assure compliance with federal standards. Staff support of the Manufactured Housing Board includes receiving and resolving consumer complaints and licensing all manufacturers, dealers, set-up contractors and salespersons that do business in this state to ensure compliance with warranty requirements set forth in the General Statutes.

The Division is responsible for filing claims against surety bonds in the event dealers, manufacturers or set-up contractors go out of business or cannot otherwise fulfill their warranty obligations.

Manufactured Building is also responsible for developing set-up and anchoring standards for manufactured homes and assisting local inspection departments in the inspection of homes for proper set-up and anchoring requirements. Training seminars are held throughout the state each year to familiarize the local inspection departments, manufacturers, dealers, set-up contractors and other interested parties with the manufactured housing standards and any recent revisions to those standards.

This Division is entirely receipt supported. A portion of these receipts come from fees received from HUD for manufactured homes placed in our state for retail sale. The Division receives additional funds from licensing fees charged to manufacturers, dealers, set-up contractors and salespersons.

The Division also supplements its receipts by participating in a monitoring contract with the National Conference of States on Building Codes Standards. During 2001-2002, Division staff spent approximately 2,240 hours in interstate monitoring inspections of manufacturing plant facilities.

The Manufactured Building Division also serves as staff to the North Carolina Building Code Council in the administration of the state's modular construction program. This includes receiving and resolving modular complaints and the certification and monitoring of residential and commercial modular manufacturers. Currently there are 124 certified manufacturers shipping modular buildings into North Carolina, with plant locations ranging from Florida to Texas to Quebec. The Division also certifies independent certification agencies (third party agencies) that review modular plans for compliance with the North Carolina State Building Code and monitors production in modular plants on continuing basis.

Manufactured Building Division Activities

	2001	2002
Complaints Received	880	658
Inspections Completed	556	336
Manufacturers Licensed	83	77
Dealers Licensed	875	780
Set-up Contractors Licensed	587	535
Salespersons Licensed	2,876	2,336
Salespersons Temp. Licensed	1,206	966
Board Hearings Scheduled	36	17
Pre-Hearing Conferences Scheduled	161	99

Manufactured Building Division Activities - Modular Construction

	2001	2002
Complaints	84	46
Manufacturers	122	124
Third Party Certification Agencies	9	9
Modular Stamps	6396	6312

Risk Management Division

This division is responsible for the operation and maintenance of the State Property Fire Insurance Fund, the self-insurance plan for the State's property. The division currently has jurisdiction over approximately 14,000 state-owned buildings with a combined value of $11.7 billion. Losses to the State's property are investigated and adjusted by this division and are paid from the Fund with the approval of the Council of State. A total of 48 claims were paid from the Fund in 2002, totaling $578,725.

The Fund provides basic fire and lightning insurance coverage for state-owned property and offers insurance for wind, hail, riot, explosion, smoke, theft, sprinkler leakage, vandalism, flood, business interruption and "all risk." All General Fund facilities are insured for fire and lightning at no cost to the agency. Approximately 75 percent of the State's buildings receive this coverage free. Special Fund facilities are billed for this coverage at approximately one-half of the manual rate. This arrangement has saved the State millions of dollars, compared to buying commercial insurance. When the Fund was established in 1945, the General Assembly recognized that loss prevention was an essential ingredient for a successful self-insurance program. Statutes require an annual fire and life safety inspection of all State-owned buildings by inspectors who are certified in the interpretation of codes and standards for fire protection and construction. Reports are made to agency managers

for correction of deficiencies. The inspection staff also provides advice on corrective measures.

This division also inspects all new electrical systems in state-owned buildings to assure that these systems comply with the State Electrical Code. Also, technical expertise and Electrical Code consultation is provided to local electrical inspectors, design engineers, contractors and the general public. This division administers a third party accreditation program for school electrician certification and coordinates planning and presentation of educational programs on the State Electrical Code.

The Risk Management Division serves as a resource for state agencies in resolving risk issues. This division administers the State's automobile insurance program, which covers 37,836 vehicles. Also, various types of insurance coverages are procured for state agencies from private insurance companies. These coverages include, but are not limited to, inland marine, ocean marine, aircraft liability and physical damage, boiler and machinery, workers compensation, accident and health, general liability, crime, professional liability and bonds. This division assists local governments with their property and casualty insurance programs. Since 1986, 167 North Carolina communities and counties have received insurance surveys and risk management services.

The Division also provides staff, administration and research services to the Public Officers and Employees Liability Insurance Commission. The Commission is charged with making available a plan of professional liability coverages for all law enforcement officers, public officials and employees of any political subdivision of the state. The Commission also provides $11,000,000 in liability coverage on all state employees for losses resulting in bodily injury or property damage and for errors and omissions in the performance of their jobs. 75 Claims were fund.

Fire and Rescue Commission

The Fire and Rescue Commission is an advisory board consisting of representatives from various fire and rescue organizations as well as state agencies. The Commission is responsible for developing voluntary certification programs and professional standards for all levels of fire and rescue personnel.

Presently, eight certification programs and 20 levels of certification are active, including: Firefighter, Instructor, Rescue Technician, Fire and Life Safety Educator, Fire Apparatus Driver/Operator, Emergency Vehicle Driver, Hazardous Materials Responder, Fire/Arson Investigator and Fire Officer I.

The Firefighter, Instructor, Hazardous Materials and the Driver/Operator programs are currently accredited by the International Fire Service Accreditation Congress, of which the Commission is an active member.

Each month the Commission receives approximately 300 applications for one of the above mentioned certifications, along with approximately 300 re-certification requests. In 2001-2002, the Commission certified or re-certified 1700 individuals to the level of fire fighter I and 1611 to the level of fire fighter II. Presently a firefighter must re-certify ever five years. The Commission records currently maintain over 60,000 certifications.

An ongoing project of the Commission is development and dissemination of the Occupational Safety and Health Standard for Fire Departments and Rescue Squads. This was a compilation of the applicable NFPA Standards and OSHA General Industry Standards.

Future programs for the Commission will include the Unified Command and Control and the Line-of-Duty-Death programs. Pilot testing of these courses will begin in early 2003.

The goal of such programs is that they will provide additional professional recognition, as well as enhance the safety of emergency services personnel in North Carolina.

Fire and Rescue Training and Inspection Division

This division serves as the certifying agency for qualifying fire departments and their members for several benefit programs.

The primary responsibility of this group is the delivery of instructor upgrade and qualification courses. However, additional requirements extend to direct program deliveries, program development and participation on the State Emergency Response Team.

During the biennium efforts were made to provide the best possible service for the Fire and Rescue Services in North Carolina. A constant review and update of all existing instructional programs is essential in providing the most current information and techniques. Training delivery continued with an emphasis on instructor upgrade and qualification but has also provided for special school direct deliveries.

This section has participated in programs provided by the National Fire Academy and the Emergency Management Institute both on a federal and regional level. Personnel attended classes as well as received the train-the-trainer programs to be delivered to in-state instructors and responders. OSFM personnel have been appointed to and are currently serving on national committees with the responsibility of creating training standards and curriculum with organizations including the National Fire Protection Agency (NFPA), FARMEDIC and the Terrorism Task Force.

This section also continues to attend in-state meetings and conventions and to serve on committees where requested. Some of the events which have been attended by our personnel include: the North Carolina State Firemen's Association and North Carolina Association of Fire Chiefs annual conference, winter meeting of the Fire Chiefs Association, the North Carolina Association of Rescue and EMS annual conference, EMS Today, the North Carolina Association of County Commissioners, the North Carolina Fire College and many others.

Rating Classification

Rural Fire Districts		Municipal Fire Districts	
ISO Class	**No. in N.C.**	**ISO Class**	**No. in N.C.**
1	0	1	1
2	0	2	5
3	0	3	22
4	5	4	41
5	33	5	111
6	61	6	96
7	47	7	50
8	7	8	15
9S	986	9S	14
9E	58	9E	0

Fire Department Statistics

As of January 1, 2003	
Fire Departments in North Carolina	1,314
Municipal Fire Departments	250
Non-Profit Corporations	1,064
Fire Districts in North Carolina	1,548
Rural Fire Districts in North Carolina	1,193
Municipal Fire Districts	341
Municipal Fire Districts with ISO Class of 9S	14
Rural Fire Districts with ISO Rating Less than a Class 9S	151
Fire Districts with Split/Class Rating (ex. 6/9S)	472

The Department of Insurance has responsibility for conducting inspections of departments in areas with a population less than 100,000. These inspections serve to determine the rate classification for property insurance.

The inspection program is designed to help improve fire protection for the citizens of North Carolina and increase the safety of our state's firefighters. Oftentimes it results in

lower in lower property insurance rates. This section continues to assist local governments with fire district mapping, setting up tax districts, preparing fire departments for NCRRS surveys and by providing information on benefit programs. The section also serves as an information resource on rural fire protection for local government officials.

The Department also has duty of inspecting more than 1,000 volunteer fire departments in North Carolina. The results of these inspections are reported to the North Carolina Fire Rate Bureau and are used by them in filing future rates for fire insurance costs. The fire departments are reinspected on a two-to-three year cycle in order to maintain a current picture of the quality of fire protection in North Carolina and to assist the departments in making improvements.

These inspections ensure that the fire departments are maintaining the minimum rating requirements. Meeting these requirements provides for the eligibility of the department's personnel to participate in the Fireman's Pension Fund, in the Firemen's Death Benefit Act and in the Firemen's Relief Fund. Meeting these requirements also allows property owners living in the fire district to enjoy a lower fire insurance premium on their property insurance.

Fire Dept. Inspection Summary: 2002

	East	West	State Total
Counties Inspected	42	45	87
Districts Inspected	381	362	743
Districts Meeting Requirements	376	354	730
Districts Not Meeting Requirements	5	8	13
Percentage Meeting Requirements	99	98%	98%
Percentage Not Meeting Requirements	1%	2%	2%

Further duties of this section include providing fire protection information to local government officials, county fire marshals, local fire associations and citizens of North Carolina. Inspectors also assist with programs to fire departments and rescue squads on financing alternatives, record keeping, contract agreements, benefits and other administrative subjects.

Prevention, Programs and Grants Division

The Prevention, Programs and Grants Division is responsible for the development of comprehensive injury prevention strategies. Reducing deaths and injuries, especially to children, along with the associated economic costs, is the focus of the Injury Prevention Section. Unintentional injuries caused by fires/burns, falls, traffic crashes, poisoning and drowning are targeted. The section's primary goal is to raise awareness about the major causes of injury and develop interventions.

Special programs directed by this section include NC SAFE KIDS, Risk Watch, Learn Not To Burn and NC SAFE KIDS Buckle Up. The mission of these four programs is to reduce unintentional childhood injuries from birth through age 14, by coordinating a network of public and private partners. In 2002, over $1,200,000 in grants and public/private partnerships have been committed for NC SAFE KIDS. The Governor's Highway Safety Program provided grants exceeding $800,000 to NC SAFE KIDS Buckle Up in FY 2002.

In partnership with North Carolina Operation Lifesaver (NCOL), the Injury Prevention Section continues to offer grade crossing safety training for emergency responders. Individuals are certified to train their peers in a program called "They Shouldn't Die This Way." The goal of the program is to reach over 80,000 emergency responders with the NCOL message.

Research is a key component in the efforts of the Injury Prevention Section. Areas researched include impact studies, product-specific studies, educational methods research and general trend analysis. Data collected through the North Carolina Fire Incident Reporting System and Casualty Reporting System determines the development of fire/burn prevention and safety programs for emergency responders.

The Research and Program Development section facilitates curriculum development and the related audio/visual materials for all fire and rescue training programs. In addition, this section designs and develops informational and educational materials for publication and distribution to the public. The *Fire & Rescue Journal* is published quarterly by the Research and Program Development group.

Funds

Working closely with the North Carolina Fireman's Association, division staff continues to improve collection and disbursement of the Firemen's Relief Fund. Significant effort has been made to reduce the number of fire departments disqualified due to ineligibility. The Rescue Relief Fund was created in 1987 to assist rescue personnel in need.

Total Firemen's Relief Fund tax collected for 2001 was $3,731,391.12 and a total of $3,342,348.37 was disbursed to fire departments meeting all General Statute requirements. Total Rescue Relief Fund tax collected for 2002 was $829,686,.31 and a total of $713,530.22 was disbursed to the North Carolina Association of Rescue and EMS to distribute the funds according to General Statute 58-88-5. Total Rescue Relief Fund tax collected for 2001 was $699,362.39 and a total of $615,438.89 was disbursed to the North Carolina Association of Rescue and EMS to distribute the funds according to GS 58-88-5. The Department of Insurance was given the responsibility by the General Assembly to administer the Volunteer Fire Department Fund and the Volunteer Rescue/EMS Fund in 1988. The intent of these programs is to financially aid volunteer fire departments and

rescue providers to purchase related equipment and to make capital expenditures, based on need.

The Volunteer Fire Department Fund matches on a dollar-for-dollar basis up to $20,000. The Volunteer Rescue/EMS Fund will match on a dollar-for-dollar basis up to $15,000. The Volunteer Rescue/EMS Fund also allows rescue providers with liquid assets of less than $1,000 to apply for a $3,000 non-matching grant. Approved monies for volunteer fire departments and volunteer rescue providers through the Volunteer Fire Department Fund and the Volunteer Rescue/EMS Fund since 1988 exceeds $35,000,000.

Volunteer Fire Department and Rescue/EMS Grants

	2001	2002
Volunteer Fire Department Fund	$2,784,044.28	$3,443,905.30
Volunteer Rescue/EMS Fund	$1,050,029.84	$1,322,081.11

The Volunteer Workers Compensation Fund was established by the General Assembly to provide low cost workers compensation insurance coverage to non-municipal volunteer fire departments, rescue squads and EMS departments. It was established as a self-funded program within the Department of Insurance. Each fire, rescue or EMS department pays $50 per individual for volunteers and $250 per individual for career personnel. The fund is supplemented each year by an appropriation from the General Assembly. Per requirements of the statutes, the fund is governed by the North Carolina Fire and Rescue Commission housed within the Department of Insurance. The Commission contracts with a third party administrator (TPA) to handle administration of the fund, as directed by statute. Currently Key Risk management services serves as the TPA.

Remembering When Overview

The Office of State Fire Marshal (OSFM) and the Seniors' Health Insurance Information Program (SHIIP) have partnered to present the National Fire Prevention Association's fall and burn prevention series called Remembering When. A nostalgic trivia game is the hook that entices senior citizen audiences to learn how to prevent falls and burns, common injuries among the state's older citizens. By sharing staff and resources, OSFM and SHIIP hope to reach seniors in every county of the state within the next few years. A grant (in the amount of over $70,000) from CDC through the North Carolina Department of Health has been allocated for year 2002.

Learn Not to Burn Overview

Learn Not To Burn is an NFPA fire and burn prevention curriculum taught by the classroom teacher to students in Pre-School through Grade 8. Each teacher is provided with manuals including lesson plans, knowledge tests and other materials for use in the classroom.

Juvenile Fire Setters

OSFM has created the North Carolina Counsel for the Prevention of Juvenile Fire Setters. The Council is comprised of members from the fire service, law enforcement, juvenile justice, medical and social services agencies. The purpose of the council is to address the serious concern of the growing rate of Juvenile firesetting in North Carolina.

Risk Watch

Risk Watch is a comprehensive injury prevention curriculum for children in preschool through Grade 8. The program is taught in the classroom by teachers with support from community resources. Students act out learning activities by assuming character roles appropriate to their development stage. The program covers the eight safety areas that effects children the most with injuries and deaths, those being motor vehicle; fire and burn; choking, suffocation, and strangulation; poisoning; falls; firearms injury; bike and pedestrian; and water.

North Carolina Code Officials Qualification Board

The board is organized under the provisions of Chapter 143, Article 9C of the North Carolina General Statutes. A list of members follows, along with the individual or organization by whom they were appointed.

Ronnie Bailey *
Asst. Professor, Architectural Engineering
North Carolina A&T University
Greensboro, NC 27411 336-334-7575

Tim Bradley – Secretary *
Sr. Deputy Commissioner, NCDOI
P. O. Box 26387
Raleigh, NC 27611 919-733-3901

Richard D. Ducker *
Institute of Government
CB# 3330 Knapp Building UNC
Chapel Hill, NC 27599 919-966-5381

Charles England
England Contractors
Route 5 Box 126
Marion, NC 28752 828-738-4067

Mark H. Hicks
Mark Hicks Builder, Inc.
221 Hillsboro Street
Oxford, NC 27565 919-693-1866

Charles R. Horne
Chatham County Manager
P. O. Box 87
Pittsboro, NC 27312 919-542-8200

James D. Kennedy, Jr. - Chairman
Senior Electrical Inspector
100 Liberty Walk/Nations Bank Plaza
Winston-Salem, NC 27101 336-727-2365

Hayden Lutterloh, III
Assistant Fire Chief
P. O. Box 3729
Sanford, NC 27331

Joseph E. Martin
City of Sanford Alderman
549 Summit Drive
Sanford, NC 27330 919-776-6022

Barry Mowbray
Town of Wrightsville Beach Alderman
13 East Atlanta Street
Wrightsville Beach, NC 28480 910-791-5400

Robert M. Pittman *
Program Coordinator
Dept. of Community Colleges
Raleigh, NC 27611 919-733-7051

William Rakatansky, AIA
Freeman White
21136 Norman Shores Drive
Cornelius, NC 28031 704-586-2419

Deborah Simpson - Vice-Chairman
Asst. Director Cumberland Co. Inspection Department
P.O. Drawer 1829
Fayetteville, NC 28302 910-483-0113

Sam Vaughan, III
Vaughan Electric, Inc.
P. O. Box 11677
Durham, NC 27703 919-596-1327

Edwin C. Weaver, PE *
Civil Engineering Department
N.C. State University
Raleigh, NC 27695-7908 919-515-7430

* State Employees

North Carolina Building Code Council

NC General Statutes 143-138 authorize the N.C. Building Code Council to prepare, adopt and amend the State Building Code. The council consists of 17 members appointed by the governor for six-year terms. Statutes require that members have expertise in areas relating to construction safety. The council meets twice a year in June and December.

Members

Barry Gardner
Chairman
(General Contractor)
Shelco, Inc.
3120 Beechleaf Ct./#401
Raleigh, NC 27604
(919) 877-2607
(919) 877-2601 Fax

Thomas L. Avery, PE
(Structural Engineer)
Structural Systems Inc.
P. O. Box 1563
Wilmington, NC 28402
(910) 763-7311
(910) 763-0726 Fax

Lon M. Culbertson, PE
(Electrical Engineer)
CRB Engineers
1225 Crescent Green/Ste 300
Cary, NC 27511
(919) 852-5433
(919) 852-5454 Fax

Marshall Knight, Jr.
(Coastal Residential Contractor)
751 Body Road
Hertford, NC 27944
(252) 264-3201
(252) 264-3201 Fax

Barry J. Maness
(Mechanical Contractor)
Tarheel Contracting Co. Inc.
P.O. Box 2636
Asheboro, NC 27204
(336) 626-3754
(336) 626-0309 Fax

Jack F. Neel, PE
(Municipal-Gov't Rep)
1007 Colonial Drive
Albemarle, NC 28001
(704) 982-8434
(704) 983-2974 Fax

John Llewellyn Hitch, AIA
Vice Chairman
(Architect)
The Smith Sinnett Assoc., P.A.
4601 Lake Boone Trail
Raleigh, NC 27607
(919) 781-8582
(919) 781-3979 Fax

Aubrey Smith, PE
(Building Inspector)
100 East 1st Street/Ste 337
Winston Salem, NC 27101
(336) 727-2084
(336) 727-2792 Fax

Gary T. York
(County Government Representative)
Surry County Commissioner
P.O. Box 48
Mount Airy, NC 27030
(336) 789-5561
(336) 789-7067 Fax

Dan Tingen
(Homebuilder)
Tingen Construction Company
8411 Garvey Drive #101
Raleigh, NC 27616-3176
(919) 875-2161
(919) 875-2162 Fax

J. Albert Bass Jr.
(Mechanical Engineer)
6425 Chapman Ct.
Raleigh, NC 27612
(919) 782-4689

Terry B. Greene
(Gas Industry)
Piedmont Natural Gas Co.
P.O. Box 29527
Greensboro, NC 27429-9527
(336) 378-1831
(336) 333-2271 Fax

Bradley C. Lail
(Public Representative)
548 North Center Street
Hickory, NC 28601
(828) 322-3510
(828) 322-6286 Fax

Dan Murray, PE
(State Agency)
Division of State Construction
301 N. Wilmington St.
Raleigh, NC 27601
(919) 733-7962
(919) 733-6609 Fax

Gordon T. Reynolds
(Electrical Contractor)
G. T. Reynolds Construction
P.O. Box 550323
Gastonia, NC 28054
(704) 865-6262
(704) 865-4455 Fax

Richard Strickland
(Fire Services)
District Chief Fire Prevention
P.O. Drawer 1180
Rocky Mount, NC 27802-1180
(252) 972-1112
(252) 972-1590 Fax

Thomas P. Turner, FAIA
(Architect)
ADEP, P.A.
3225 Wickersham Road
Charlotte, NC 28204
(704) 375 6038
(704) 375-6039 Fax

North Carolina Fire and Rescue Commission

The North Carolina Fire and Rescue Commission is charged with developing certification standards for all levels of fire service and rescue personnel and coordinating the state's involvement with the Federal Emergency Management Agency and the U.S. Fire Administration.

The commission is also responsible for developing a master plan for fire prevention and control, increasing professional skills of fire protection and fire fighting personnel, serving as a central clearinghouse of information relating to the state's fire service activities, and handling federal and state grants.

Member	Organization
• C. Harley Cook, Chair	N.C. Society of Fire Service Instructors
• Donald Whitaker	N.C. Association of Fire Chiefs
• Dean Wall, Vice-Chair	N.C. Association of Rescue and EMS, Inc.
• Robert Poe	N.C. Association of Rescue and EMS, Inc
• Ken Dilday	N.C. Firemen's Association
• Robert Griffin	N.C. Firemen's Association
• Chuck Gallyon	N.C. Fire Marshal's Association
• Charles Howell	N.C. Association of County Commissioners
• Vacant	N.C. League of Municipalities
• Cloyce Anders	Public-at-Large
• Marvin O. Wilson	Speaker of the House Appointee
• Vacant	President of the Senate Appointee
• Fred O'Neal	Governor's Appointee
• Ed Duffield	Professional Firefighters and Paramedics of N.C.
• Mike Tapp	County Fire Marshal's Association

North Carolina Home Inspectors Licensure Board

NC General Statutes 143-151.43 Article 9F created the North Carolina Home Inspectors Licensure Board to license those who perform home inspections for compensation. A list of the eight members follows, along with the individual by whom they were appointed.

Members

John W. Hamrick
Chairman
Howard Perry & Walston Realty
8 Consultant Place
Durham, NC 27707
(919) 401-7600
(919) 493-0147 Fax

Gerald W. Canipe
ARCHISPEC
4200 Morganton Road, Suite 200-03
Fayetteville, NC 28314
(910) 868-3086
(910) 868-7184 Fax

Roger R. Pierce
Pierce Services, Inc
P. O. Box 1429
Cashiers, NC 28717
(828) 743-5013
(828) 743-3496 Fax

W. Robert Schultz
Secretary Treasurer
2904 Dunkirk Drive
Raleigh, NC 27613
(919) 845-9995
(919) 845-9915 Fax

Jeff Vaughn
Vice Chairman
Coastal Home Inspections
P. O. Box 628
New Bern, NC 28563
(252) 637-4081
(252) 633-4589 Fax

Tom Edwards
Eagle Eye Home Inspections, Inc.
P.O. Box 2086
Jamestown, NC 27282
(336) 882-6321
(336) 882-6373 Fax

Grover Sawyer
N. C. Department of Insurance
410 N. Boylan Avenue
Raleigh, NC 27603
(919) 733-3901
(919) 733-9171 Fax

T. Larry Summer
Progressive Builders
300 W. Main Street, Suite C
Cherryville, NC 28021
(704) 435-4909
(704) 435-121 Fax

North Carolina Manufactured Housing Board

The Board is empowered to issue and revoke licenses, require bonds, resolve complaints and promulgate rules as necessary to carry out these goals. The following is a list of members and the individual or industry they represent as of January 2001.

Members

Chairman: James E. Long
Insurance Commissioner
PO Box 26387
Raleigh, NC 27611

Designated Chairman: Dascheil Propes
Chief Deputy Insurance Commissioner
PO Box 26387
Raleigh, NC 27611

Insurance Commissioner Appointees		
Representing - Public	Ms. Linda Willey PO Box 232 Manteo, NC 27954	Term (1st): 10-01-99 to 09-30-02
Representing - Public	Mr. Johnnie Robbins Jim Perry & Company Realtors 3118 N. Croatan Hwy. Ste. 103 Kill Devil Hills, NC 27948-9252 252-441-3051 252-441-2936 (Fax)	Term (2nd): 10-01-99 to 09-30-02
Governor Appointees		
Representing - Manufacturer	Mr. B. J. Williams 704 Flagstone Way Durham, NC 27712 1-800-675-6705	Term (2nd): 10-01-99 to 09-30-02
Representing - Dealer	Mr. Wesley Layton Layton Sales 4431 Sunset Ave. Rocky Mount, NC 27804 252-443-1121 252-443-1122(Fax)	Term (1st): 10-01-99 to 09-30-02
Speaker Appointees		
Representing - Finance	Mr. Danny Chandler Affordable Funding,Inc. 5711 Six Forks Rd, Ste. 201 Raleigh, NC 27609 919-518-1432	Term (1st): 10-01-00 to 09-30-03
Representing - Insurance	Mr. Clark E. Crowther American Moders Ins. Group 3317 Fielding Ave. Charlotte, NC 28211 704-365-5524	Term (1st): 10-01-00 to 09-30-03
President Pro Tem of Senate Appointees		
Representing - Supplier	Mr. Troy Brickey Triad Mobile Home Supply 3968 Patterson Ave. Winston Salem, NC 27105 910-744-9071 910-744-9073(Fax)	Term (1st): 10-01-98 to 09-30-01
Representing - Set-Up Contractor	Mr. J. P. Cauley B&B Movers, Inc. 2473 Hwy. 11, North Kinston, NC 28501-9747 252-523-7995 252-523-0482(Fax)	Term (1st): 10-01-98 to 09-30-01

Public Officers and Employees Liability Insurance Commission

The Commission is given authority under North Carolina General Statutes 58-31-25 and 58-32-1 through 58-32-30 to make available a plan of professional liability insurance coverage for all law enforcement officers, public officials, and employees of any political subdivision of the State. The Public Officers and Employees Liability Insurance Commission (POELIC) is empowered to negotiate with insurance companies for the most favorable rates and coverage.

The commission also serves as liaison between the companies and those insured, to resolve any issues which may arise. The commission consists of 11 members representing city, county, and state governments, sheriffs and police departments, and the insurance industry. It meets at least four times each year, on or about the 15th of January, April, July and October. Following is a list of the members:

Members	**Representing**
Mr. Joseph R. Kluttz, Chair	Speaker of the House
Deputy Chief Kent Fletcher	N.C. Police Chiefs and N.C. Police Executives Assoc.
Mrs. Susan Klakoff	N.C. Association of County Commissioners
Sheriff Dane Mastin	N.C. Sheriffs Association
Mr. Bob Mays	Independent Insurance Agents of N.C.
Mr. J. Dal Snipes	Independent Insurance Agents of N.C.
Mr. David Walker	President Pro Tempore

Ex-Officio Members:

Mr. William A Dudley	Crime Control and Public Safety
Mr. W.A. "Doc" Hoggard	Attorney General's Office
Mr. J. Thomas Sutton, III	Commissioner of Insurance

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 8, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
P Logan	NC DOT
J Long	NC DOT
F. Fulcher	NC DOT
Bill Hale	Jordan Price
Susan Valaika	Voters Voice
Robert Percival	Young Moore
David Stalker	Stalker Farm.
Barbara Crandell	MFFS
[illegible]	H&W
Robert Cochran, M.D.	NC Med. Society
Frank Reynolds, MD	NC Med Soc.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 8, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carolyn Jennings	G.A.
Stephanie Simpson	NC Assn of Realtors
Erin Carnahan	NCINS
John Peterson	NCINS
Amy Dobson	NC. State Watch.
Mike Stevenson	Murphy Hedrick Collins
Warren Savage	Bailey & Dixon
Mark Selph	NC Licensing Bd - G.C.
Mark Dixon	Capitol Group
Joan Blackburn	NC Association of County Commissioners
Greg Ward	Southern Health Care System

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 8, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alan Travis	Physician.
Ted Kaplan	KEL Corp.
H. C. Cullaway Jr.	MD Corp
Mike Causey	NC Glaxo

AGENDA

SENATE COMMERCE COMMITTEE
Thursday, April 10, 2003 at 11:00 AM
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Bills

SB 658	Appellate Procedure/State Banking Commission.	Senator Soles
SB 773	Comm. Coll. Facility/Public-Private P'ship.	Senator Dalton
SB 775	Prelitigation Mediation of Insurance Claims.	Senator Dalton
SB 966	Insurance Personal info. Safeguards	Senator Dalton

III. Other Business

IV. Adjournment

SENATE COMMERCE COMMITTEE
Thursday, April 10, 2003 at 9:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:00 a.m. on Thursday, April 10, 2003, in Room 1027 of the Legislative Building. Eighteen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced the pages: Andrew McIndoe, sponsored by Senator Horton; and Timothy Hunter, sponsored by Senator Blake.

Senator Soles introduced Senator Dalton to explain SB 773, Comm. Coll. Facility/Public-Private P'ship. Senator Carpenter moved the adoption of a proposed committee substitute. The motion carried. Senator Forrester moved an unfavorable report of the bill, favorable as to the committee substitute. The motion carried.

Senator Dalton then explained SB 966, Insurance Personal Info. Safeguards. Senator Apodaca moved a favorable report of the bill. The motion carried.

Senator Dalton then explained SB 775, Prelitigation Mediation of Insurance Claims. Senator Purcell moved the adoption of a proposed committee substitute. The motion carried. Ms. Susan Valauri, representing Nationwide Insurance, was recognized to speak on the bill. She expressed concerns her company has with the administrative burdens the bill would impose on the insurance industry. She ended by saying she has no problem with the provisions if the administrative issues are worked out. Senator Dalton moved the adoption of an amendment to change a typographical error in the bill. The motion carried. Senator Shaw moved an unfavorable report of the bill, favorable as to the committee substitute as amended. The motion carried.

Senator Soles asked Senator Dalton to preside as the committee considered SB 658, a bill sponsored by Senator Soles. Senator Carpenter moved the adoption of a committee substitute. Ms. Karen Cochrane-Brown, Counsel to the Committee, explained the provisions of the committee substitute. Senator Carpenter moved an unfavorable report of the bill, favorable as to the committee substitute. The motion carried.

The meeting adjourned at 9:25 a.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Thursday, April 10, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **966** Insurance Personal Info. Safeguards.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Monday, April 14, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **658** Appellate Procedure/State Banking Commission.

Draft Number:	PCS 85207
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **773** Comm. Coll. Facility/Public-Private P'ship.

Draft Number:	PCS 85208
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **775** Prelitigation Mediation of Insurance Claims.

Draft Number:	PCS 40009
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 773

Short Title:	Comm. Coll. Facility/Public-Private P'ship.	(Public)
Sponsors:	Senators Dalton; Garrou and Sloan.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COMMUNITY COLLEGES TO ENTER INTO PUBLIC/PRIVATE PARTNERSHIPS FOR CONSTRUCTION PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-15 reads as rewritten:

"**§ 115D-15. Sale, exchange or lease of property; use of proceeds from donated ~~property.~~property; public/private partnerships for construction projects.**

(a) The board of trustees of any institution organized under this Chapter may, with the prior approval of the North Carolina Community Colleges System Office, convey a right-of-way or easement for highway construction or for utility installations or modifications. When in the opinion of the board of trustees the use of any other real property owned or held by the board of trustees is unnecessary or undesirable for the purposes of the institution, the board of trustees, subject to prior approval of the State Board of Community Colleges, may sell, exchange, or lease the property. The board of trustees may dispose of any personal property owned or held by the board of trustees without approval of the State Board of Community Colleges.

Article 12 of Chapter 160A of the General Statutes shall apply to the disposal or sale of any real or personal property under this subsection. Personal property also may be disposed of under procedures adopted by the North Carolina Department of Administration. The proceeds of any sale or lease shall be used for capital outlay purposes, except as provided in subsection (b) of this section.

(b) Subject to rules adopted by the State Board, if real or personal property is donated to a community college to support a specific educational purpose, the board of trustees may use the proceeds from the sale or lease of the property according to the terms of the donation. The board of trustees shall use the procedures authorized under Article 12 of Chapter 160A of the General Statutes when selling or leasing property under this subsection.

(c) The board of trustees of any institution organized under this Chapter may, with the prior approval of the State Board of Community Colleges, enter into a

public/private partnership for construction of a facility. Under such an agreement, the institution shall lease college property to a private entity on condition that the entity construct a facility on that property for the use of the private entity and the institution. State bond funds may only be used to finance that part of the facility used by the college. The provisions of G.S. 143-341(3)a. apply to the construction of a facility constructed pursuant to this subsection."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 773
PROPOSED COMMITTEE SUBSTITUTE S773-CSRC-20 [v.2]

4/9/2003 7:46:33 PM

Short Title: Comm. Coll. Facility/Public-Private P'ship. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COMMUNITY COLLEGES TO ENTER INTO PUBLIC/PRIVATE PARTNERSHIPS FOR CONSTRUCTION PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-20 is amended by adding a new subsection to read:

"**§ 115D-20. Powers and duties of trustees.**

The trustees of each institution shall constitute the local administrative board of such institution, with such powers and duties as are provided in this Chapter and as are delegated to it by the State Board of Community Colleges. The powers and duties of trustees shall include the following:

. . .

(13) To enter into a public/private partnership for construction of a facility with the prior approval of the State Board of Community Colleges. Under such an agreement, the board of trustees may lease community college property to a private entity on condition that the entity construct a facility on the leased property for the use of the private entity and the community college. State bond funds may only be used to finance that part of the facility to be used by the college. The provisions of G.S. 143-341(3)a. apply to the construction of a facility under this subsection."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 773:
Comm. Coll. Facility/Public-Private P'ship.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Dalton
Date:	April 9, 2003	**Summary by:**	Kory J. Goldsmith
Version:	S773-CSRC-20[v,1]		Committee Counsel

SUMMARY: ***SB 773 allows a community college board of trustees to enter into an agreement to lease college property to a private entity in exchange for the entity constructing a facility on the property. The State Board of Community Colleges would have to approve the agreement in advance and the Department of Administration would have to approve the plans and specifications if the cost of the building exceeds $300,000. State bond funds could be used only for that portion of the facility that the college would utilize.***

CURRENT LAW: Generally, community colleges construct facilities with funds provided by the county or State bond funds. G.S. 115D-15.1 is an alternative mechanism for funding college construction. It allows a board of trustees to transfer property to a county for the purpose of constructing , repairing or renovating a facility. Under this procedure, the county may issue certificates of participation (COPS) to fund the project. When the facility is completed, the county transfers the property back to the college.

G.S. 115D-20(12) allows a community college to permit the use of its personnel or facilities in support of or by a private business enterprise for certain economic development services.

The PCS places the new language in a different part of Chapter 115D and makes other conforming changes to the terminology.

The act is effective when it becomes law.

S773-SMRC-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 773
PROPOSED COMMITTEE SUBSTITUTE S773-PCS85208-RC-20

Short Title: Comm. Coll. Facility/Public-Private P'ship. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COMMUNITY COLLEGES TO ENTER INTO PUBLIC/PRIVATE PARTNERSHIPS FOR CONSTRUCTION PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-20 is amended by adding a new subsection to read:

"**§ 115D-20. Powers and duties of trustees.**

The trustees of each institution shall constitute the local administrative board of such institution, with such powers and duties as are provided in this Chapter and as are delegated to it by the State Board of Community Colleges. The powers and duties of trustees shall include the following:

. . .

(13) To enter into a public/private partnership for construction of a facility with the prior approval of the State Board of Community Colleges. Under such an agreement, the board of trustees may lease community college property to a private entity on condition that the entity construct a facility on the leased property for the use of the private entity and the community college. State bond funds may only be used to finance that part of the facility to be used by the college. The provisions of G.S. 143-341(3)a. apply to the construction of a facility under this subsection."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 775

Short Title:	Prelitigation Mediation of Insurance Claims.	(Public)
Sponsors:	Senators Dalton, Hartsell; and Lucas.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CONDITIONALLY REQUIRE INSURERS TO PROVIDE INFORMATION REGARDING POLICY PROVISIONS AND POLICY LIMITS PRIOR TO LITIGATION WHEN REQUESTED IN WRITING BY THE PERSONS WHO HAVE CLAIMS, OTHER THAN MEDICAL MALPRACTICE CLAIMS, SUBJECT TO INSURANCE POLICIES AND TO GIVE THESE INSURERS THE OPTION OF INITIATING PRELITIGATION MEDIATION OF THE CLAIMS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-33. Insurer conditionally required to provide information.**

(a) Upon receiving a written request for information regarding policy provisions or policy limits under an insurance policy from a person who claims to have been physically injured or to have incurred property damage subject to the policy, an insurance company shall notify that person within five business days, on a form developed by the Department, that the insurer is required to provide this information prior to litigation only if the person seeking the information satisfies all of the following conditions:

(1) The person seeking the information submits to the insurer the person's written consent to the person's physicians to release to the insurer the person's medical records for the three years prior to the date on which the claim arose.

(2) The person seeking the information submits to the insurer the person's written consent to participate in mediation of the person's claim under G.S. 7A-38.3A.

(b) Within 30 days of receiving the person's written consent under both subdivision (1) and subdivision (2) of subsection (a) of this section, the insurer shall provide the policy limits and a copy of the policy to that person.

(c) This section does not apply to claims seeking recovery for medical malpractice."

SECTION 2. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.3A. Prelitigation mediation of insurance claims.**

(a) Initiation of Mediation. – Prelitigation mediation of an insurance claim may be initiated by an insurer that has provided the policy limits and a copy of the policy in accordance with G.S. 58-3-33 by filing a request for mediation with the clerk of superior court in a county in which the action may be brought. The insurer also shall mail a copy of the request by certified mail, return receipt requested, to the person who requested the information under G.S. 58-3-33.

(b) Costs of Mediation. – Costs of mediation, including the mediator's fees, shall be borne by the insurer. When an attorney represents a party to the mediation, that party shall pay his or her attorneys' fees.

(c) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(d) Certification That Mediation Concluded. – Upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. Each party to the mediation has satisfied the requirements of this section upon the filing of the certification, except any party specified in the certification as having failed or refused to attend one or more mediation meetings or otherwise participate. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation mediation conducted under this section.

(e) Time Periods Tolled. – Time periods relating to the filing of a claim or the taking of other action with respect to an insurance claim, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification or, if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (d) of this section.

(f) Medical Malpractice Claims Excluded. – This section does not apply to claims seeking recovery for medical malpractice."

SECTION 3. This act becomes effective October 1, 2003, and applies to claims regarding physical injury or property damage that arise on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 775
PROPOSED COMMITTEE SUBSTITUTE S775-CSRU-11 [v.2]

4/9/2003 7:44:32 PM

Short Title: Prelitigation Mediation of Insurance Claims. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CONDITIONALLY REQUIRE INSURERS TO PROVIDE INFORMATION REGARDING POLICY PROVISIONS AND POLICY LIMITS PRIOR TO LITIGATION WHEN REQUESTED IN WRITING BY THE PERSONS WHO HAVE CLAIMS, OTHER THAN MEDICAL MALPRACTICE CLAIMS, SUBJECT TO INSURANCE POLICIES AND TO GIVE THESE INSURERS THE OPTION OF INITIATING PRELITIGATION MEDIATION OF THE CLAIMS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-33. Insurer conditionally required to provide information.**

(a) Upon receiving a written request for information regarding policy provisions or policy limits under an insurance policy from a person who has filed a claim alleging to have been physically injured or to have incurred property damage subject to the policy, an insurance company shall notify that person within five business days, on a form developed by the Department, that the insurer is required to provide this information prior to litigation only if the person seeking the information satisfies all of the following conditions:

(1) The person seeking the information submits to the insurer the person's written consent to the person's physicians to release to the insurer the person's medical records for the three years prior to the date on which the claim arose.

(2) The person seeking the information submits to the insurer the person's written consent to participate in mediation of the person's claim under G.S. 7A-38.3A.

(3) The person seeking the information submits to the insurer a cop of the accident report required under G.S. 20-166.1.

(b) Within 30 days of receiving the person's written documents required under subsection (a) of this section, the insurer shall provide the policy limits and a copy of the policy to that person.

(c) Disclosure of the policy limits under this section shall not constitute an admission that the alleged injury or damage is subject to the policy.

(d) This section does not apply to claims seeking recovery for medical malpractice."

SECTION 2. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.3A. Prelitigation mediation of insurance claims.**

(a) Initiation of Mediation. – Prelitigation mediation of an insurance claim may be initiated by an insurer that has provided the policy limits and a copy of the policy in accordance with G.S. 58-3-33 by filing a request for mediation with the clerk of superior court in a county in which the action may be brought. The insurer also shall mail a copy of the request by certified mail, return receipt requested, to the person who requested the information under G.S. 58-3-33.

(b) Costs of Mediation. – Costs of mediation, including the mediator's fees, shall be borne by the insurer. When an attorney represents a party to the mediation, that party shall pay his or her attorneys' fees.

(c) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(d) Certification That Mediation Concluded. – Upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. Each party to the mediation has satisfied the requirements of this section upon the filing of the certification, except any party specified in the certification as having failed or refused to attend one or more mediation meetings or otherwise participate. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation mediation conducted under this section.

(e) Time Periods Tolled. – Time periods relating to the filing of a claim or the taking of other action with respect to an insurance claim, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification or, if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (d) of this section.

(f) Medical Malpractice Claims Excluded. – This section does not apply to claims seeking recovery for medical malpractice."

SECTION 3. This act becomes effective October 1, 2003, and applies to claims regarding physical injury or property damage that arise on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-10-03

S. B. No. 775 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE PCS-CSRV-11

Rep.)
Sen.) DALTON

1 moves to amend the bill on page 1, line 27
2 ( ) WHICH CHANGES THE TITLE
3 by DELETING THE WORD "COP" AND SUBSTITUTING THE
4 WORD "COPY"
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SIGNED Warren Dalton

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 775:
Prelitigation Mediation of Insurance Claims.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Dalton
Date:	April 10, 2003	**Summary by:**	O. Walker Reagan
Version:	Proposed Committee Substitute S775-CSRU-11		Committee Co-Counsel

SUMMARY: ***Senate Bill 775 would establish a method for an injured party to obtain information on policy coverage and policy limits from an insurance company prior to litigation in exchange for the injured party being willing to enter into mediation on the claim prior to filing suit.***

CURRENT LAW: Currently an insurance company is not required to disclose policy coverage or policy limits to a third party to the policy who may have a liability claim against the policyholder. There is also no current law that allows an insurer to initiate a mediation process with a person claiming against the insured's policyholder.

BILL ANALYSIS: Section 1 of the bill requires an insurer to furnish information concerning the policy provisions and policy limits to a person who claims to have been injured or damaged by another covered by the insurance policy provided that the injured person agrees to participate in mediation of the claim prior to litigation, authorizes release to the insurance company of the person's medical records for the prior three years, and submits a copy of the accident report containing the financial responsibility information of the insurer's policyholder. Once the injured person has submitted this information to the insurer, the insurer is required to furnish the information about the policy within 30 days.

The information the insurer is required to provided under Section 1 would be discoverable by a party to a lawsuit after the lawsuit is filed under current law. Even though the information is disclosed, either under this bill or through discovery, the insurance information is not admissible in evidence in a trial by reason of this disclosure, and generally is not admissible in personal injury or property damages cases. This section does not apply in medical malpractice claims.

Section 2 establishes the procedures for prelitigation of insurance claims. The insurer initiates the mediation after having provided the insurance information to the injured party as required under Section 1 of the bill. The costs of mediation are to be paid by the insurer. The mediation shall be conducted in accordance with the standard mediation procedures for civil cases in accordance with rules adopted by the Supreme Court to carry out this law. Once the mediation is concluded, the mediator files a certification on the mediation with the clerk. Time periods, including any statutes of limitation, are suspended during the mediation and for a period of 30 days after the mediation concludes. The mediation procedure provided for under this section does not apply to malpractice claims.

EFFECTIVE DATE: This bill becomes effective October 1, 2003, and applies to injuries and property damage that occurs on or after the effective date

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 775
PROPOSED COMMITTEE SUBSTITUTE S775-PCS40009-RU-11

Short Title: Prelitigation Mediation of Insurance Claims. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CONDITIONALLY REQUIRE INSURERS TO PROVIDE INFORMATION REGARDING POLICY PROVISIONS AND POLICY LIMITS PRIOR TO LITIGATION WHEN REQUESTED IN WRITING BY THE PERSONS WHO HAVE CLAIMS, OTHER THAN MEDICAL MALPRACTICE CLAIMS, SUBJECT TO INSURANCE POLICIES AND TO GIVE THESE INSURERS THE OPTION OF INITIATING PRELITIGATION MEDIATION OF THE CLAIMS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-33. Insurer conditionally required to provide information.**

(a) Upon receiving a written request for information regarding policy provisions or policy limits under an insurance policy from a person who has filed a claim alleging to have been physically injured or to have incurred property damage subject to the policy, an insurance company shall notify that person within five business days, on a form developed by the Department, that the insurer is required to provide this information prior to litigation only if the person seeking the information satisfies all of the following conditions:

(1) The person seeking the information submits to the insurer the person's written consent to the person's physicians to release to the insurer the person's medical records for the three years prior to the date on which the claim arose.

(2) The person seeking the information submits to the insurer the person's written consent to participate in mediation of the person's claim under G.S. 7A-38.3A.

(3) The person seeking the information submits to the insurer a copy of the accident report required under G.S. 20-166.1.

(b) Within 30 days of receiving the person's written documents required under subsection (a) of this section, the insurer shall provide the policy limits and a copy of the policy to that person.

(c) Disclosure of the policy limits under this section shall not constitute an admission that the alleged injury or damage is subject to the policy.

(d) This section does not apply to claims seeking recovery for medical malpractice."

SECTION 2. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.3A. Prelitigation mediation of insurance claims.**

(a) Initiation of Mediation. – Prelitigation mediation of an insurance claim may be initiated by an insurer that has provided the policy limits and a copy of the policy in accordance with G.S. 58-3-33 by filing a request for mediation with the clerk of superior court in a county in which the action may be brought. The insurer also shall mail a copy of the request by certified mail, return receipt requested, to the person who requested the information under G.S. 58-3-33.

(b) Costs of Mediation. – Costs of mediation, including the mediator's fees, shall be borne by the insurer. When an attorney represents a party to the mediation, that party shall pay his or her attorneys' fees.

(c) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2, and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(d) Certification That Mediation Concluded. – Upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. Each party to the mediation has satisfied the requirements of this section upon the filing of the certification, except any party specified in the certification as having failed or refused to attend one or more mediation meetings or otherwise participate. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation mediation conducted under this section.

(e) Time Periods Tolled. – Time periods relating to the filing of a claim or the taking of other action with respect to an insurance claim, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification or, if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (d) of this section.

(f) Medical Malpractice Claims Excluded. – This section does not apply to claims seeking recovery for medical malpractice."

SECTION 3. This act becomes effective October 1, 2003, and applies to claims regarding physical injury or property damage that arise on or after that date.

SENATE BILL 966

Short Title:	Insurance Personal Info. Safeguards.	(Public)
Sponsors:	Senators Dalton; and Dorsett.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE INSURERS TO IMPLEMENT SAFEGUARDS FOR THE PROTECTION OF PERSONAL INFORMATION, PURSUANT TO THE PROVISIONS OF THE GRAMM-LEACH-BLILEY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The heading for Article 39 of Chapter 58 of the General Statutes reads as rewritten:

"Article 39.

~~Insurance Information and Privacy Protection Act.~~

Consumer Information Privacy."

SECTION 2. Article 39 of Chapter 58 of the General Statutes is amended by:

(1) Designating G.S. 58-39-1 through G.S. 58-39-76 as:
"Part 1. Insurance Information and Privacy Protection."

(2) Designating G.S. 58-39-80 through G.S. 58-39-125 as:
"Part 2. Enforcement, Sanctions, Remedies, and Rights." and

(3) Recodifying G.S. 58-39-70 as G.S. 58-39-125.

SECTION 3. G.S. 58-39-1 reads as rewritten:

"**§ 58-39-1. Short ~~title.~~titles.**

This Article may be cited as the Consumer Information Privacy Act. Part 1 of this Article may be cited as the Insurance Information and Privacy Protection Act. Part 3 of this Article may be cited as the Personal Information Safeguards Act."

SECTION 4. G.S. 58-39-5 reads as rewritten:

"**§ 58-39-5. Purpose.**

The purpose of this Article is to establish standards for the collection, use, and disclosure of information gathered in connection with insurance transactions by insurance institutions, agents, or insurance-support organizations; to maintain a balance between the need for information by those conducting the business of insurance and the public's need for fairness in insurance information practices, including the need to

minimize intrusiveness; to establish a regulatory mechanism to enable natural persons to ascertain what information is being or has been collected about them in connection with insurance transactions and to have access to such information for the purpose of verifying or disputing its accuracy; to limit the disclosure of information collected in connection with insurance transactions; and to enable insurance applicants and policyholders to obtain the reasons for any adverse underwriting decision. The purpose of this Article is also to establish standards for developing and implementing administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of an individual's personal information requiring protection under Parts 1 and 2 of this Article, as required by sections 501, 505, and 507 of the federal Gramm-Leach-Bliley Act (Public Law 106-102), codified as 15 U.S.C. §§6801, 6805(b), and 6807. The purpose of this Article is also to provide privacy protection consistent with federal regulations governing the privacy of medical records when this Article is consistent with those federal regulations. In those instances in which this Article and the federal privacy regulations are inconsistent and this Article provides privacy protection beyond that offered by the federal regulations, the purpose of this Article is to provide that additional privacy protection."

SECTION 5. Article 39 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Personal Information Safeguards.

"**§ 58-39-130. Application.**

The safeguards established under this Part apply to all personal information of individuals requiring protection under Parts 1 and 2 of this Article.

"**§ 58-39-135. Definitions.**

As used in this Part, in addition to the definitions in G.S. 58-39-15:

(1) 'Information systems' means the electronic or physical methods used to access, collect, store, use, transmit, protect, or dispose of personal information.

(2) 'Licensee' means any producer, as defined in G.S. 58-33-10(7), insurer, MEWA, HMO, or service corporation governed by this Chapter. 'Licensee' does not mean:

a. An insurance-support organization.

b. A licensee who is a natural person operating within the scope of the licensee's employment by or affiliation with an insurer or producer.

c. A surplus lines insurer or licensee under Article 21 of this Chapter.

(3) 'Service provider' means a person that maintains, processes, or otherwise is permitted access to personal information through its provision of services directly to the licensee and includes an insurance support organization.

"**§ 58-39-140. Information security program.**

Each licensee shall implement a comprehensive written information security program that includes administrative, technical, and physical safeguards for the

protection of personal information. The administrative, technical, and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

"**§ 58-39-145. Objectives of information security program.**

A licensee's information security program shall be designed to:

(1) Ensure the security and confidentiality of personal information;

(2) Protect against any anticipated threats or hazards to the security or integrity of the information; and

(3) Protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any individual or in a violation of Part 1 of this Article.

"**§ 58-39-150. Examples of development and implementation methods.**

The actions and procedures described in G.S. 58-39-155 through G.S. 58-39-170 are examples of methods of implementation of the requirements of G.S. 58-39-140 and G.S. 58-39-145. These examples are non-exclusive illustrations of actions and procedures that licensees may follow to implement G.S. 58-39-140 and G.S. 58-39-145.

"**§ 58-39-155. Risk assessment.**

The licensee identifies reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of personal information or a licensee's information systems, and assesses the likelihood and potential damage of these threats, taking into consideration the sensitivity of the personal information involved. The licensee also assesses the sufficiency of policies, procedures, information systems, and other safeguards in place to control risks.

"**§ 58-39-160. Risk management and control.**

The licensee:

(1) Designs its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities;

(2) Trains staff, as appropriate, to implement the licensee's information security program; and

(3) Regularly tests or otherwise regularly monitors the key controls, systems, and procedures of the information security program. The frequency and nature of these tests or other monitoring practices are determined by the licensee's risk assessment.

"**§ 58-39-165. Service provider arrangement oversight.**

The licensee:

(1) Exercises appropriate due diligence in selecting its service providers.

(2) Requires its service providers to implement appropriate measures designed to meet the objectives of this Part and, where indicated by the licensee's risk assessment, takes appropriate steps to confirm that its service providers have satisfied these obligations.

"**§ 58-39-170. Program adjustment.**

The licensee monitors, evaluates, and adjusts, as appropriate, the information security program in light of any relevant changes in technology, the sensitivity of an

individual's personal information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to personal information systems.

"**§ 58-39-175. Violation.**

A violation of G.S. 58-39-140 or G.S. 58-39-145 subjects the violator to Part 2 of this Article.

"**§ 58-39-180. Effective date.**

Each licensee shall establish an information security program, including appropriate policies and systems, under this Part by January 1, 2004."

SECTION 6. This act is effective when it becomes law.

SENATE BILL 966:
Insurance Personal Info. Safeguards

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	Senator Dalton
Date:	April 9, 2003	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 966 requires insurers to establish standards for developing and implementing safeguards to protect the security of personal information, as required by the federal Gramm-Leach-Bliley Act of 1999. The Gramm-Leach-Bliley Act of 1999 places restrictions upon the disclosure of personal information by financial institutions, including insurers, and requires the Department of Insurance to enforce privacy requirements under the federal law.

BILL ANALYSIS: In 1999, Congress enacted the Gramm-Leach-Bliley Act. The Act places restrictions on the disclosure of a consumer's financial information to third parties by financial institutions and requires financial institutions to provide notice to customers about their information collection and sharing practices. "Financial institutions" under the federal law is defined as companies that offer financial products or services, including insurance companies. State insurance authorities (the Department of Insurance) are given responsibility under the federal act to enforce its provisions in the case of persons "engaged in providing insurance."

Senate Bill 966 requires insurers to implement a comprehensive written information security program that includes safeguards for the protection of personal information. The program must be designed to:

- Ensure the security and confidentiality of personal information.
- Protect against anticipated threats to security.
- Protect against unauthorized access to or use of information in violation of the federal law.

The bill provides non-exclusive examples for insurers to meet these requirements including:

- Risk assessment to identify internal or external threats that could result in unauthorized disclosure of personal information.
- Risk management and control of identified risks through its information security program, and staff training and testing of the controls, systems and procedures of the program.
- Oversight of the insurer's service providers.

The bill also asks that insurers monitor and adjust the information security program to reflect changes in technology, the sensitivity of the personal information, threats to the information, and changing business arrangements such as mergers and acquisitions.

Failure to implement an information security program as required by the bill would subject an insurer to the sanctions and remedies available to the Department under Chapter 58.

EFFECTIVE DATE: Senate Bill 966 is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 658

Short Title:	Appellate Procedure/State Banking Commission.	(Public)
Sponsors:	Senators Soles and Clodfelter.	
Referred to:	Commerce.	

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO RESOLVE CONFLICTING STATUTES; TO AMEND THE APPELLATE PROCEDURE BEFORE THE STATE BANKING COMMISSION; AND TO AUTHORIZE THE COMMISSIONER OF BANKS TO APPOINT A HEARING OFFICER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-29(a) reads as rewritten:

"(a) From any final order or decision of the North Carolina Utilities Commission not governed by subsection (b) of this section, the Department of Health and Human Services under G.S. 131E-188(b), ~~the Commissioner of Banks under Articles 17, 18, 18A, and 21 of Chapter 53 of the General Statutes, the Administrator of Savings and Loans under Article 3A of Chapter 54B of the General Statutes,~~ the North Carolina Industrial Commission, the North Carolina State Bar under G.S. 84-28, the Property Tax Commission under G.S. 105-290 and G.S. 105-342, the Commissioner of Insurance under G.S. 58-2-80, or the Secretary of Environment and Natural Resources under G.S. 104E-6.2 or G.S. 130A-293, appeal as of right lies directly to the Court of Appeals."

SECTION 2. G.S. 53-92(d) reads as rewritten:

"(d) The Banking Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of Banks of all powers, duties, and functions now vested in or exercised by the Commissioner of Banks under the banking laws of this ~~State; any~~ State. Upon an appeal to the Banking Commission by any party from an order entered by the Commissioner of Banks following an administrative hearing pursuant to Article 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, the chairman of the Commission may appoint an appellate review panel of not less than five members to review the record on appeal, hear oral arguments, and make a recommended decision to the Commission. Any party to an order by the Commissioner of Banks may, within 20 days after the order and upon written notice to the Commissioner, appeal the Commissioner's order to the Banking Commission for review. Upon notice of an appeal, the Commissioner of Banks shall,

within 30 days of the notice, certify to the Commission the record on appeal. Any party to a proceeding before the Banking Commission may, within 20 days after final order of said Commission and by written notice to the Commissioner of Banks, appeal to the Superior Court of Wake County for a final determination of any question of law which may be involved. The cause shall be entitled "State of North Carolina on Relation of the Banking Commission against (here insert name of appellant)." It shall be placed on the civil issue docket of such court and shall have precedence over other civil actions. In the event of an appeal the Commissioner shall certify the record to the Clerk of Superior Court of Wake County within 15 days thereafter."

SECTION 3. G.S. 53-93 reads as rewritten:

"**§ 53-93. Powers and duties of Commissioner.**

The Commissioner of Banks shall have the powers, duties and functions herein given, and in addition thereto such other powers and rights as may be necessary or incident to the proper discharge of ~~his~~ the Commissioner's duties. The Commissioner may appoint and assign a member of the staff of the Office of the Commissioner of Banks to preside at administrative hearings required by Article 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, and make a recommended decision to the Commissioner."

SECTION 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 658
PROPOSED COMMITTEE SUBSTITUTE S658-CSRO-8 [v.1]

4/9/2003 7:58:16 PM

Short Title: Appellate Procedure/State Banking Commission. (Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO RESOLVE CONFLICTING STATUTES; TO AMEND THE APPELLATE PROCEDURE BEFORE THE STATE BANKING COMMISSION; AND TO AUTHORIZE THE COMMISSIONER OF BANKS TO APPOINT A HEARING OFFICER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-29(a) reads as rewritten:

"(a) From any final order or decision of the North Carolina Utilities Commission not governed by subsection (b) of this section, the Department of Health and Human Services under G.S. 131E-188(b), ~~the Commissioner of Banks under Articles 17, 18, 18A, and 21 of Chapter 53 of the General Statutes, the Administrator of Savings and Loans under Article 3A of Chapter 54B of the General Statutes,~~ the North Carolina Industrial Commission, the North Carolina State Bar under G.S. 84-28, the Property Tax Commission under G.S. 105-290 and G.S. 105-342, the Commissioner of Insurance under G.S. 58-2-80, or the Secretary of Environment and Natural Resources under G.S. 104E-6.2 or G.S. 130A-293, appeal as of right lies directly to the Court of Appeals."

SECTION 2. G.S. 53-92(d) reads as rewritten:

"(d) The Banking Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of Banks of all powers, duties, and functions now vested in or exercised by the Commissioner of Banks under the banking laws of this ~~State; any~~ State. Upon an appeal to the Banking Commission by any party from an order entered by the Commissioner of Banks following an administrative hearing pursuant to Article 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, the chairman of the Commission may appoint an appellate review panel of not less than five members to review the record on appeal, hear oral arguments, and make a recommended decision to the Commission. Unless another time period for appeals is provided by this Chapter, any party to an order by the Commissioner of Banks may, within 20 days after the order and upon written notice to

the Commissioner, appeal the Commissioner's order to the Banking Commission for review. Upon notice of an appeal, the Commissioner of Banks shall, within 30 days of the notice, certify to the Commission the record on appeal. Any party to a proceeding before the Banking Commission may, within 20 days after final order of said Commission and by written notice to the Commissioner of Banks, appeal to the Superior Court of Wake County for a final determination of any question of law which may be involved. The cause shall be entitled "State of North Carolina on Relation of the Banking Commission against (here insert name of appellant)." It shall be placed on the civil issue docket of such court and shall have precedence over other civil actions. In the event of an appeal the Commissioner shall certify the record to the Clerk of Superior Court of Wake County within 15 days thereafter."

SECTION 3. G.S. 53-93 reads as rewritten:

"**§ 53-93. Powers and duties of Commissioner.**

The Commissioner of Banks shall have the powers, duties and functions herein given, and in addition thereto such other powers and rights as may be necessary or incident to the proper discharge of ~~his~~ the Commissioner's duties. The Commissioner may appoint and assign a member of the staff of the Office of the Commissioner of Banks to preside at administrative hearings required by Article 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, and make a recommended decision to the Commissioner."

SECTION 4. This act is effective when it becomes law.

SENATE BILL 658:
Appellate Procedure/State Banking Commission.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Sen. Soles and Clodfelter
Date:	April 10, 2003	**Summary by:**	Karen Cochrane Brown
Version:	Proposed Committee Substitute S658-CSRO-8 [v.1]		Committee Counsel

SUMMARY: ***Senate Bill 658 amends the law relating to appellate procedure before the State Banking Commission to resolve a conflict in the statute, and to authorize the Chair of the Commission to appoint review panels to hear appeals from determinations of the Banking Commissioner and to make recommendations to the full Commission. The bill also authorizes the Commissioner of Banks to appoint a member of the Commissioner's staff to act as hearing officer. The proposed committee substitute makes a technical correction.***

CURRENT LAW:

The current law, relating to appeals to the Court of Appeals from certain administrative agencies, allows an appeal as of right from a decision of the Commissioner of Banks if the case involves several Articles of Chapter 53, the Banking Law. Another provision in Chapter 53 provides that any party may appeal to Superior Court of Wake County from a final order of the Banking Commission. Since the Banking Commission is authorized to review decisions of the Commissioner of Banks, these two provisions raise an apparent conflict.

BILL ANALYSIS:

This bill resolves the conflict in the laws relating to judicial review of Banking Commission orders. Section 1 of the bill removes the Commissioner of Banks from the provision authorizing appeals directly to the Court of Appeals, so that appeals from the Banking Commission will be heard in Superior Court of Wake County.

Section 2 of the bill authorizes the Chair of the Banking Commission to appoint a review panel of not less than five members to hear arguments and make a recommended decision to the full Commission. The Banking Commission is composed of 22 members and is chaired by the State Treasurer. This amendment will allow for more efficient and expeditious review of appeals. Also, appeals from orders of the Commissioner must be taken within 20 days after the order. The PCS limits the 20-day requirement to cases where no other time period is provided in the Banking Law. In Articles 17 and 18 of the Banking Law, a 30-day period for appeal is authorized.

Section 3 permits the Commissioner of Banks to appoint and assign a member of his staff to preside at administrative hearings and make a recommended decision to the Commissioner.

This act is effective when it becomes law.

S658-SMRO-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 658
PROPOSED COMMITTEE SUBSTITUTE S658-PCS85207-RO-8

Short Title: Appellate Procedure/State Banking Commission. (Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO RESOLVE CONFLICTING STATUTES; TO AMEND THE APPELLATE PROCEDURE BEFORE THE STATE BANKING COMMISSION; AND TO AUTHORIZE THE COMMISSIONER OF BANKS TO APPOINT A HEARING OFFICER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-29(a) reads as rewritten:

"(a) From any final order or decision of the North Carolina Utilities Commission not governed by subsection (b) of this section, the Department of Health and Human Services under G.S. 131E-188(b), ~~the Commissioner of Banks under Articles 17, 18, 18A, and 21 of Chapter 53 of the General Statutes, the Administrator of Savings and Loans under Article 3A of Chapter 54B of the General Statutes,~~ the North Carolina Industrial Commission, the North Carolina State Bar under G.S. 84-28, the Property Tax Commission under G.S. 105-290 and G.S. 105-342, the Commissioner of Insurance under G.S. 58-2-80, or the Secretary of Environment and Natural Resources under G.S. 104E-6.2 or G.S. 130A-293, appeal as of right lies directly to the Court of Appeals."

SECTION 2. G.S. 53-92(d) reads as rewritten:

"(d) The Banking Commission is hereby vested with full power and authority to supervise, direct and review the exercise by the Commissioner of Banks of all powers, duties, and functions now vested in or exercised by the Commissioner of Banks under the banking laws of this ~~State; any~~ State. Upon an appeal to the Banking Commission by any party from an order entered by the Commissioner of Banks following an administrative hearing pursuant to Article 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, the chairman of the Commission may appoint an appellate review panel of not less than five members to review the record on appeal, hear oral arguments, and make a recommended decision to the Commission. Unless another time period for appeals is provided by this Chapter, any party to an order by the Commissioner of Banks may, within 20 days after the order and upon written notice to

the Commissioner, appeal the Commissioner's order to the Banking Commission for review. Upon notice of an appeal, the Commissioner of Banks shall, within 30 days of the notice, certify to the Commission the record on appeal. Any party to a proceeding before the Banking Commission may, within 20 days after final order of said Commission and by written notice to the Commissioner of Banks, appeal to the Superior Court of Wake County for a final determination of any question of law which may be involved. The cause shall be entitled "State of North Carolina on Relation of the Banking Commission against (here insert name of appellant)." It shall be placed on the civil issue docket of such court and shall have precedence over other civil actions. In the event of an appeal the Commissioner shall certify the record to the Clerk of Superior Court of Wake County within 15 days thereafter."

SECTION 3. G.S. 53-93 reads as rewritten:

"**§ 53-93. Powers and duties of Commissioner.**

The Commissioner of Banks shall have the powers, duties and functions herein given, and in addition thereto such other powers and rights as may be necessary or incident to the proper discharge of ~~his~~ the Commissioner's duties. The Commissioner may appoint and assign a member of the staff of the Office of the Commissioner of Banks to preside at administrative hearings required by Article 3A of Chapter 150B of the General Statutes, the Administrative Procedure Act, and make a recommended decision to the Commissioner."

SECTION 4. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Commerce — April 10, 2003
Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
PEYTON MAYNARD	CMS
Ed Regan	NCACC
Jay Fielder	NCAEC
Betty Turner	Bank of America
Leslie Bourgeois	NCCBI
Barbara Candler	MFS's
Jan Flom	[illegible]
Mike Reaves	Brunswick Community College
Dollie Hotchkiss	NC Assoc. of Electric Coops
FRAN PRESTON	NCRMA
DAVID STOLLER	STATE FARM
BILL HALE	JORDAN PRICE LAW FIRM
Bob Rhinehardt	DOA - P&C
Sharon Hayes	DOA
Ray Broughton	DOA P&C
Carolyn Mynch	DOA
Tom Coley	CWA
Larry McLamb	OPI
John Phelps	NCLM
Chris Nichols	Hunton + Williams
Debra Dees	BellSouth

VISITOR REGISTRATION SHEET

Commerce — April 10, 2003

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Bob Allain	NC Justice Ctr
Michael Houser	NCAE
Tim Minton	NC Home Builders
Bill Scoggin	KCCH
TERRY LAWLER	MCI WORLDCOM
JEFF VAN DYKE	BST
Mark Laggett	
Andy Lomenzo	NCLM
John McAlister	Duke Energy
Stan Pace	VERIZON COMMUNICATIONS
Suzanne Wiles	NCCCS
Paul Stock	NC Bankers Assn.
Joe Johnson	Ragsdale Liggett
Mark Benson	Capitol Focus
Jerry Jones	Attorney - Raleigh
Lee McMillan	MFES
Lew Phillips	NEATL
Jeff Horne	NCMS
John Bowdich	Astra Zeneca

AGENDA

SENATE COMMERCE COMMITTEE
Tuesday, April 15, 2003 at 11:00 AM
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Bills to be Considered

SB 469	Unfair Trade Practices/Life Insurance Sales.	Senator Hartsell
SB 510	Safety at Automatic Teller Machines.	Senator Reeves
SB 557	Require Drug Test Before Licensure/Cab Driver.	Senator Hoyle
SB 661	Health Care Information Privacy.	Senator Reeves
SB 673	Clarify Fire Tax Calculation.-AB	Senator Hoyle
SB 676	Revise the Banking Laws of NC	Senator Hoyle
SB 750	Increase Permit Limit for Breweries.	Senator Hagan
SB 777	Amend Dealer Licensing Law.	Senator Foxx
SB 799	Telephone Solicitations/Consent to Charge.	Senator Hoyle
SB 847	Clarify Fees Charged to Residential Tenants.	Senator Gulley
SB 861	Adopt International Building Code.	Senator Clodfelter
SB 913	Streamline Building Code.	Senator Clodfelter

III. Other Business

IV. Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, April 15, 2003 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, April 15, 2003, in Room 1027 of the Legislative Building. Twenty members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced the pages: Clayton Bennett of Raleigh, sponsored by Senator Reeves, and Roman Do of Raleigh, sponsored by Senator Malone.

Senator Soles called on Senator David Hoyle to explain SB 557, Require Drug Test Before Licensure/Cab Driver. Senator Virginia Foxx moved a favorable report of the bill. The motion carried.

Senator Hoyle also explained SB 799, Telephone Solicitations/Consent to Charge. He sent forward an amendment and moved adoption of the amendment. The motion carried. Senator Tony Rand moved a favorable report of the bill as amended and further moved it be engrossed into a committee substitute. The motion carried.

Senator Hoyle then explained SB 673, Clarify Fire Tax Calculation-AB. Senator Rand moved for a favorable report with a referral to the Finance Committee. The motion carried.

Senator Soles introduced Senator Fletcher Hartsell to present SB 469, Unfair Trade Practices/ Life Insurance Sales. Senator Hartsell in turn introduced Mr. Ron Gibson who owns an Allstate Insurance Agency in Denver, North Carolina. Mr. Gibson spoke in favor of the bill. Senator Rand sent forth an amendment and moved its adoption. The motion carried. Senator Larry Shaw moved a favorable report of the bill as amended and further moved it be engrossed into a committee substitute. Senator Soles asked if there were any comments from the audience. Mr. Dashiell Propes of the Department of Insurance reported the Department has no problem with the bill. Mr. John McMillan, representing the Allstate Insurance Company, was recognized to speak on the bill. He stated that Allstate opposes the bill. Mr. Robert Pascal, representing State Farm Insurance, also spoke in opposition to the bill. Mr. Steve Woodson, representing the North Carolina Farm Bureau, spoke in opposition to the bill as unnecessary interference in a contractual relationship between the company and the local operator. Ms. Michelle Frazier, representing the North Carolina Bar Association, stated the Bar has taken the position that they would prefer market forces rule in this matter. The motion carried.

Senator Kay Hagan was recognized to present information about SB 750, Increase Permit Limit for Breweries. Mr. Chris Valauri, representing the North Carolina Beer and Wine Wholesalers spoke against the bill, as did Mr. John McMillan, representing the Anheuser Busch Company. Mr. Bill Sherrill, owner and operator of the Red Oak brewery, spoke in favor of the bill. Senator Hagan moved a favorable report of the bill. The motion failed.

Senator Wib Gulley was introduced to explain SB 847, Clarify Fees Charged to Residential Tenants. Senator Rand moved the adoption of a committee substitute for discussion purposes.

The motion carried. Senator Bob Carpenter moved an unfavorable report of the bill, but a favorable report of the committee substitute. The motion carried.

Senator Eric Reeves was introduced to explain SB 510, Safety at Automatic Teller Machines. Senator Robert Pittenger moved the adoption of a committee substitute for discussion purposes. The motion carried. Senator Foxx moved an unfavorable report of the bill, but a favorable report of the committee substitute. The motion carried.

Senator Hoyle presented information about SB 676, Revise the Banking Laws of North Carolina. Ms. Karen Cochrane-Brown explained the sections of the bill. Mr. Joseph Smith, Commissioner of Banks gave an overview of the bill, which was introduced to modernize the North Carolina banking laws. The Commissioner highlighted Sections 4, 5 and 29 as being very important. Senator Hoyle moved a favorable report with a referral to the Finance Committee. The motion carried.

Senator Foxx was recognized to explain SB 777, Amend Dealer Licensing Law. She moved the adoption of an amendment. The motion carried. After discussion, Senator Foxx withdrew the amendment. Senator Ballantine moved for a favorable report of the bill. The motion carried.

Senator Reeves was recognized to explain SB 661, Health Care Information Privacy. Senator Rand moved for the adoption of an amendment. The motion carried. Mr. Sam Taylor, representing the North Carolina Biosciences Organization, drew the committee's attention to the last one-third of the bill, which would restrict the information that could be disclosed to a pharmaceutical company and would hold back the conduct of research. He asked to work with the sponsor to come up with compromise language to address that issue. Mr. Ken Wright, representing Blue Cross Blue Shield, said there would be some cost to them if the bill passed. Mr. Gary Salamido, representing Glaxo-Smith Kline, reported that they recognize there are issues of patient privacy and want to assure that inappropriate use of information does not occur. He went on to say Glaxo has concerns with two of the provisions of the bill: the definition of marketing and the opting in provision.

The meeting adjourned at 1:00 p.m. without taking any action on SB 661.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, April 15, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B.	**557**	Require Drug Test Before Licensure/Cab Driver.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**673**	Clarify Fire Tax Calculation.-AB	
		Sequential Referral:	None
		Recommended Referral:	Finance
S.B.	**676**	Revise the Banking Laws of North Carolina.	
		Sequential Referral:	None
		Recommended Referral:	Finance
S.B.	**777**	Amend Dealer Licensing Law.	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED: 4

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Wednesday, April 16, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **510** Safety at Automatic Teller Machines.

Draft Number:	PCS 65262
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **799** Telephone Solicitations/Consent to Charge.

Draft Number:	PCS 40012
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Thursday, April 17, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **107** MV Insurers-No Mandate on Nonoriginal Parts.

Draft Number:	PCS 65266
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **109** Motor Vehicle Glass Repairs.

Draft Number:	PCS 40015
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **469** Unfair Trade Practices/Life Insurance Sales.

Draft Number:	PCS 75236
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **558** Disclosure of Prior MV Damage.

Draft Number:	PCS 55176
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **559** Clarify MV Dealer Franchise Laws.

Draft Number:	PCS 35240
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **995** School Construction/Repair Flexibility.

Draft Number:	PCS 35243
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 6

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

CORRECTED REPORT

Monday, April 21, 2003

SENATOR RAND.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **290** Clarify Certain Building Code Requirement.

Draft Number:	PCS 85215
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Changes Public to Local:	Yes

S.B. **521** Pyrotechnic Regulation Enhanced.

Draft Number:	PCS 40022
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **620** Purchasing Flexibility for Schools.

Draft Number:	PCS 55177
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **847** Clarify Fees Charged to Residential Tenants.

Draft Number:	PCS 65267
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 557

Short Title:	Require Drug Test Before Licensure/Cab Driver.	(Public)
Sponsors:	Senators Hoyle; and Smith.	
Referred to:	Commerce.	

March 27, 2003

A BILL TO BE ENTITLED

AN ACT REQUIRING A TAXICAB DRIVER TO PASS A CONTROLLED SUBSTANCE EXAMINATION BEFORE BEING LICENSED AS A TAXICAB DRIVER IN THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-304(a) reads as rewritten:

"(a) A city may by ordinance license and regulate all vehicles operated for hire in the city. The ordinance may require that the drivers and operators of taxicabs engaged in the business of transporting passengers for hire over the public streets shall obtain a license or permit from the city; provided, however, that the license or permit fee for taxicab drivers shall not exceed fifteen dollars ($15.00). As a condition of licensure, the city may require an applicant for licensure to pass a controlled substance examination. The ordinances may also specify the types of taxicab services ~~which~~ that are legal in the municipality; provided, that in all cases shared-ride services as well as exclusive-ride services shall be legal. Shared-ride service is defined as a taxi service in which two or more persons with either different origins or with different destinations, or both, occupy a taxicab at one time. Exclusive-ride service is defined as a taxi service in which the first passenger or party requests exclusive use of the taxicab. In the event the applicant is to be subjected to a national criminal history background check, the ordinance shall specifically authorize the use of FBI records. The ordinance shall require any applicant who is subjected to a national criminal history background check to be fingerprinted.

The Department of Justice may provide a criminal record check to the city for a person who has applied for a license or permit through the city. The city shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau

of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The city shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

The following factors shall be deemed sufficient grounds for refusing to issue a permit or for revoking a permit already issued:

(1) Conviction of a felony against this State, or conviction of any offense against another state which would have been a felony if committed in this State;

(2) Violation of any federal or State law relating to the use, possession, or sale of alcoholic beverages or narcotic or barbiturate drugs;

(3) Addiction to or habitual use of alcoholic beverages or narcotic or barbiturate drugs;

(4) Violation of any federal or State law relating to prostitution;

(5) Noncitizenship in the United States;

(6) Habitual violation of traffic laws or ordinances.

The ordinance may also require operators and drivers of taxicabs to display prominently in each taxicab, so as to be visible to the passengers, the city taxi permit, the schedule of fares, a photograph of the driver, and any other identifying matter that the council may deem proper and advisable. The ordinance may also establish rates that may be charged by taxicab operators, may limit the number of taxis that may operate in the city, and may grant franchises to taxicab operators on any terms that the council may deem advisable."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 557: Require Drug Test Before Licensure as a Cab Driver.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Hoyle
Date:	April 15, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 557 amends the municipal taxi driver licensure statute to permit a municipality to require an applicant for a taxi driver license to pass a controlled substance examination.***

CURRENT LAW: Cities are allowed by ordinance to license taxicabs and taxi cab drivers. They are also allowed to require criminal history background checks as part of licensure. Cities can charge up to $15 for a taxi or taxi driver license or permit.

BILL ANALYSIS: The bill would permit a city to require an applicant for a taxi driver license to pass a controlled substances examination.

EFFECTIVE DATE: The bill is effective when it becomes law.

S557-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 799

Short Title:	Telephone Solicitations/Consent to Charge.	(Public)
Sponsors:	Senators Hoyle; and Bingham.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE TELEPHONE SOLICITORS, WHEN THE TELEPHONE SOLICITOR HAS PREVIOUSLY OBTAINED AN ACCOUNT NUMBER, TO OBTAIN WRITTEN OR VERBAL CONSENT BEFORE CAUSING A NEW CHARGE TO THE ACCOUNT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-30.2. Telephone solicitations; consent required for new charges to previously obtained accounts.**

(a) A telephone solicitor shall not charge or cause a charge to an account holder's account as a result of a previously obtained account number telephone solicitation unless the telephone solicitor first obtains authorization from the account holder for the specific charge discussed during the call.

(b) Authorization under subsection (a) of this section is not effective until the account holder has been advised, clearly and conspicuously, of all of the following information:

(1) That the telephone solicitor has the account holder's account number.

(2) That the telephone solicitor is going to charge the account holder's account.

(3) The specific account that will be charged.

(4) The specific amount that the account holder's account will be charged.

(5) The name, address, and telephone number of the person who will be charging the account holder's account.

(c) An account holder's authorization may be in writing or may be given verbally. If the telephone solicitor uses written authorization, the telephone solicitor shall not charge the account holder's account until the account holder's written authorization is received by the telephone solicitor. If the telephone solicitor uses verbal authorization, either the authorization must be audiotaped by the telephone solicitor and

the telephone solicitor must advise the account holder that the authorization is being recorded; or the account holder must disclose the last four digits of the account holder's account number so long as the telephone solicitor has reasonable procedures in effect to verify that such digits as provided by the account holder match the last four digits of the account to be charged. Telephone solicitors shall keep and maintain authorizations under this subsection for a period of two years and shall make them available to the account holder upon written request.

(d) When a telephone solicitor utilizes a voice response unit, whether inbound or outbound, an account holder may give verbal authorization by providing the last four digits of the account holder's account number, an account number previously assigned to the account holder by the telephone solicitor, or an alternate unique identifier that enables the telephone solicitor to verify or confirm the account holder's authorization, so long as the information required under subsection (b) of this section is clearly and conspicuously disclosed to the account holder before the authorization is given. As used in this subsection, 'voice response unit' means a device that allows a user to provide or obtain information from a computer system using Touch-Tone input or speech input.

(e) The following definitions apply in this section:

(1) 'Account' means a credit card, debit card, checking account, savings account, loan account, telephone service account, utility account, or other similar account.

(2) 'Account holder' means a consumer who owns an account or a consumer who has authority to cause a charge or debit to an account.

(3) 'Authorization' means an account holder providing express consent to a telephone solicitor or person acting on behalf of the telephone solicitor to charge or cause to be charged the account holder's account for the purchase of goods or services.

(4) 'Charge' means a charge or debit, or an attempt to charge or debit, an account, whether by electronic or any other means, if that account can be charged without the express written authorization of the account holder to each specific charge or debit. Charge does not include a charge or debit, or an attempt to charge or debit, a telephone service account for local or long distance telecommunications services.

(5) 'Goods' or 'services' means goods or services that are normally used for personal, household, or family purposes.

(6) 'Previously obtained account number telephone solicitation' means a telephone call in which the telephone solicitor attempts to obtain account holder authorization for a current or future charge without obtaining the account number from the account holder during the call. 'Previously obtained account number telephone solicitation' does not include the sale of securities through a telephone call, if the telephone solicitor is a licensed securities agent or broker in the State. 'Previously obtained account number telephone solicitation' does not include a telephone call initiated by an account holder during which the person receiving the telephone call attempts to sell, offer for sale, or otherwise

induce the account holder to purchase goods or services. 'Previously obtained account number telephone solicitation' does not include a call to or from a current customer of the telephone solicitor to renew or extend, inquire about or add goods or services if the customer has previously provided account information for billing purposes to the telephone solicitor and the telephone solicitor clearly and conspicuously discloses that such renewal or extension, or additional goods or services, will be debited to the same account.

(7) 'Telephone solicitor' has the same meaning as defined in G.S. 75-30.1."

SECTION 2. This act becomes effective October 1, 2003, and applies to telephone solicitations, as defined in G.S. 75-30.1, made on or after that date.

SENATE BILL 799:
Telephone Solicitations/Consent to Charge.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Hoyle
Date:	April 15, 2003	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 799 adds a new provision to the law to require telephone solicitors to obtain written or verbal consent before making a new charge to an account, when the telephone solicitor has previously obtained the account number.***

CURRENT LAW:

The current law relating to telephone solicitations (G.S. 75-30.1) imposes several requirements on telephone solicitors such as that they clearly identify themselves, that they terminate the call if the person does not consent to it, and that they remove anyone who does not wish to be called from their contact list. No telephone solicitor can call a residence between 9:00 pm and 8:00 am, and they must keep records for 24 months of the calls they make. The law imposes a civil penalty of up to $500.00 for violation of the act. The current law does not contain any provision relating to telephone solicitations to a person when the solicitor has previously obtained the person's account number.

BILL ANALYSIS:

This bill prohibits a telephone solicitor from charging a person's account when they have previously obtained the account number, unless the telephone solicitor obtains authorization from the account holder for the specific charge discussed during the call. Before giving the authorization, the account holder must be advised that the solicitor has the account number, that the solicitor is going to charge the account, the specific account that will be charged, the specific amount of the charge, and the name address and telephone number of the person making the charge.

The authorization may be in writing or may be given verbally. Written authorization must be received before the account is charged. Verbal authorization may be obtained by recording the conversation, in which case the account holder must be informed, or by the account holder disclosing the last four digits of the account number. Telephone solicitors must keep authorization for two years and must make them available to account holders on request.

If the telephone solicitor uses a "voice response unit", which is a computer system using Touch-Tone or speech input, the account holder may give authorization by providing the last four digits of the account number or some other unique identifier. However, the solicitor must still provide the same information as a live caller before the authorization can be given.

The bill does not provide any penalty for violation of the act.

The act would become effective October 1, 2003, and apply to telephone solicitations made on or after that date.

S799-SMRO-001

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/15/03

S. B. No. 799 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

1 moves to amend the bill on page 2, line 49
2 ( ) WHICH CHANGES THE TITLE
3 by after "verbal authorization" adding
4 "or other authorization provided by a
5 'voice response unit' as defined in
6 this subsection."
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 799
PROPOSED COMMITTEE SUBSTITUTE S799-PCS40012-RO-10

Short Title: Telephone Solicitations/Consent to Charge. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE TELEPHONE SOLICITORS, WHEN THE TELEPHONE SOLICITOR HAS PREVIOUSLY OBTAINED AN ACCOUNT NUMBER, TO OBTAIN WRITTEN OR VERBAL CONSENT BEFORE CAUSING A NEW CHARGE TO THE ACCOUNT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-30.2. Telephone solicitations; consent required for new charges to previously obtained accounts.**

(a) A telephone solicitor shall not charge or cause a charge to an account holder's account as a result of a previously obtained account number telephone solicitation unless the telephone solicitor first obtains authorization from the account holder for the specific charge discussed during the call.

(b) Authorization under subsection (a) of this section is not effective until the account holder has been advised, clearly and conspicuously, of all of the following information:

(1) That the telephone solicitor has the account holder's account number.

(2) That the telephone solicitor is going to charge the account holder's account.

(3) The specific account that will be charged.

(4) The specific amount that the account holder's account will be charged.

(5) The name, address, and telephone number of the person who will be charging the account holder's account.

(c) An account holder's authorization may be in writing or may be given verbally. If the telephone solicitor uses written authorization, the telephone solicitor shall not charge the account holder's account until the account holder's written authorization is received by the telephone solicitor. If the telephone solicitor uses verbal

authorization, either the authorization must be audiotaped by the telephone solicitor and the telephone solicitor must advise the account holder that the authorization is being recorded; or the account holder must disclose the last four digits of the account holder's account number so long as the telephone solicitor has reasonable procedures in effect to verify that such digits as provided by the account holder match the last four digits of the account to be charged. Telephone solicitors shall keep and maintain authorizations under this subsection for a period of two years and shall make them available to the account holder upon written request.

(d) When a telephone solicitor utilizes a voice response unit, whether inbound or outbound, an account holder may give verbal authorization or other authorization provided by a voice response unit as defined in this subsection by providing the last four digits of the account holder's account number, an account number previously assigned to the account holder by the telephone solicitor, or an alternate unique identifier that enables the telephone solicitor to verify or confirm the account holder's authorization, so long as the information required under subsection (b) of this section is clearly and conspicuously disclosed to the account holder before the authorization is given. As used in this subsection, 'voice response unit' means a device that allows a user to provide or obtain information from a computer system using Touch-Tone input or speech input.

(e) The following definitions apply in this section:

(1) 'Account' means a credit card, debit card, checking account, savings account, loan account, telephone service account, utility account, or other similar account.

(2) 'Account holder' means a consumer who owns an account or a consumer who has authority to cause a charge or debit to an account.

(3) 'Authorization' means an account holder providing express consent to a telephone solicitor or person acting on behalf of the telephone solicitor to charge or cause to be charged the account holder's account for the purchase of goods or services.

(4) 'Charge' means a charge or debit, or an attempt to charge or debit, an account, whether by electronic or any other means, if that account can be charged without the express written authorization of the account holder to each specific charge or debit. Charge does not include a charge or debit, or an attempt to charge or debit, a telephone service account for local or long-distance telecommunications services.

(5) 'Goods' or 'services' means goods or services that are normally used for personal, household, or family purposes.

(6) 'Previously obtained account number telephone solicitation' means a telephone call in which the telephone solicitor attempts to obtain account holder authorization for a current or future charge without obtaining the account number from the account holder during the call. 'Previously obtained account number telephone solicitation' does not include the sale of securities through a telephone call, if the telephone solicitor is a licensed securities agent or broker in the State. 'Previously obtained account number telephone solicitation' does not include a

telephone call initiated by an account holder during which the person receiving the telephone call attempts to sell, offer for sale, or otherwise induce the account holder to purchase goods or services. 'Previously obtained account number telephone solicitation' does not include a call to or from a current customer of the telephone solicitor to renew or extend, inquire about or add goods or services if the customer has previously provided account information for billing purposes to the telephone solicitor and the telephone solicitor clearly and conspicuously discloses that such renewal or extension, or additional goods or services, will be debited to the same account.

(7) 'Telephone solicitor' has the same meaning as defined in G.S. 75-30.1."

SECTION 2. This act becomes effective October 1, 2003, and applies to telephone solicitations, as defined in G.S. 75-30.1, made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 1

SENATE BILL 673

Short Title:	Clarify Fire Tax Calculation.-AB	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Commerce.	

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE BASE TO WHICH THE ADDITIONAL FIRE AND LIGHTNING PREMIUMS TAX RATE APPLIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-228.5(d)(3) reads as rewritten:

"(3) Additional Statewide Fire and Lightning Rate. – An additional tax shall be applied to the entire gross premiums on ~~contracts~~ each contract of insurance ~~applicable to~~ that includes fire and lightning coverage, except in the case of marine and automobile policies, at the rate of one and thirty-three hundredths percent (1.33%). Twenty-five percent (25%) of the net proceeds of this additional tax shall be deposited in the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. The remaining net proceeds shall be credited to the General Fund."

SECTION 2. This act becomes effective January 1, 2004, and applies to gross premiums and membership dues from business done on or after that date.

SENATE BILL 673:
Clarify Fire Tax Calculation

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	Senator Hoyle
Date:	April 15, 2003	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 673 makes changes to G.S. 105-228.5, *Taxes measured by gross premiums.* The bill clarifies that tax rates for statewide fire and lightning insurance coverage apply to the entire gross premiums on each contract of insurance. The tax rate is not changed by the bill and remains at 1.33%.

EFFECTIVE DATE: Senate Bill 673 would become effective January 1, 2004 and applies to gross premiums and membership dues from business done on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 469

Short Title:	Unfair Trade Practices/Life Insurance Sales.	(Public)
Sponsors:	Senators Hartsell; and Clodfelter.	
Referred to:	Commerce.	

March 20, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CERTAIN CONDITIONS PLACED ON EXCLUSIVE AGENCY CONTRACTS FOR THE SALE OF LIFE INSURANCE OR FINANCIAL SERVICES ARE UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE TRADE PRACTICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-63-15 is amended by adding a new subdivision to read:

"(14) Sale of Life Insurance or Financial Services. – Requiring nonemployee, exclusive agents who have exclusive agency contracts or agreements with an insurer as of January 1, 2002, to sell either (i) a specified number of life and health insurance policies in relation to the sale of property and casualty insurance or (ii) a specific level of financial services, as a condition of continuing the exclusive agency contract or agreement. This subdivision does not apply to insurance agents who do not offer property or casualty lines of insurance."

SECTION 2. This act becomes effective October 1, 2003.

SENATE BILL 469:
Unfair Trade Practices/Life Insurance Sales

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	Senator Hartsell
Date:	April 15, 2003	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: Senate Bill 469 would provide that certain conditions placed on the sale of life insurance policies and financial services are unfair and deceptive trade practices.

Article 63 of Chapter 58, *Unfair Trade Practices*, regulates unfair methods of competition and trade practices in the business of insurance.

Senate Bill 469 would provide that requiring nonemployee, exclusive agents to sell (1) a specified number of policies in relation to the sale of property or casualty insurance or (2) a specific level of financial services, as a condition of continuing an exclusive contract, is an unfair trade practice.

Under current law, the Commissioner of Insurance is authorized to investigate and issue a cease and desist order for persons violating the provisions of this Chapter. Persons violating a cease and desist order are subject to a penalty of not less than $1,000 nor more than $5,000 for each violation.

EFFECTIVE DATE: Senate Bill 469 is effective October 1, 2003.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. First

H. B. No. _____

S. B. No. 469

COMMITTEE SUBSTITUTE _____

DATE 4/15/03

Amendment No. 1
(to be filled in by Principal Clerk)

Rep.)
Sen.) Rand

moves to amend the bill on page 1, line 11

( ) WHICH CHANGES THE TITLE

by deleting "January 1, 2002," and substituting "January 1, 2002"

SIGNED Troy Rand

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 469
PROPOSED COMMITTEE SUBSTITUTE S469-PCS75236-RG-6

Short Title: Unfair Trade Practices/Life Insurance Sales. (Public)

Sponsors:

Referred to:

March 20, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CERTAIN CONDITIONS PLACED ON EXCLUSIVE AGENCY CONTRACTS FOR THE SALE OF LIFE INSURANCE OR FINANCIAL SERVICES ARE UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE TRADE PRACTICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-63-15 is amended by adding a new subdivision to read:

"(14) Sale of Life Insurance or Financial Services. – Requiring nonemployee, exclusive agents who have exclusive agency contracts or agreements with an insurer as of January 1, 2002 to sell either (i) a specified number of life and health insurance policies in relation to the sale of property and casualty insurance or (ii) a specific level of financial services, as a condition of continuing the exclusive agency contract or agreement. This subdivision does not apply to insurance agents who do not offer property or casualty lines of insurance."

SECTION 2. This act becomes effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 750

Short Title:	Increase Permit Limit for Breweries.	(Public)
Sponsors:	Senator Hagan.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CEILING THAT A SMALL BREWERY MAY PRODUCE WITHOUT BEING REQUIRED TO GO THROUGH A MALT BEVERAGE DISTRIBUTOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1104 reads as rewritten:

"**§ 18B-1104. Authorization of brewery permit.**

The holder of a brewery permit may:

(1) Manufacture malt beverages;

(2) Purchase malt, hops and other ingredients used in the manufacture of malt beverages;

(3) Sell, deliver and ship malt beverages in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that malt beverages may be sold to exporters and nonresident wholesalers only when the purchase is not for resale in this State;

(4) Receive malt beverages manufactured by the permittee in some other state for transshipment to dealers in other states;

(5) Furnish or sell marketable malt beverage products, or packages which do not conform to the manufacturer's marketing standards, if State taxes have been or will be paid, to its employees for the use of the employees or their families and guests in this State;

(6) Give its products to its employees and guests for consumption on its premises;

(7) In areas where the sale is legal, sell the brewery's malt beverages at the brewery upon receiving a permit under G.S. 18B-1001(1). The brewery also may obtain a malt beverage wholesaler permit to sell, deliver, and ship at wholesale only malt beverages manufactured by the brewery. The authorization of this subdivision applies to a brewery

that sells, to consumers at the brewery, to wholesalers, to retailers, and to exporters, fewer than ~~310,000 gallons~~ 100,000 barrels of malt beverages produced by it per year.

A sale or gift under subdivision (5) or (6) shall not be considered a retail or wholesale sale under the ABC laws."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 750:
Increase Permit Limit for Breweries.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Hagan
Date:	April 15, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 750 would increase the amount of beer a holder of a brewery permit, who sells malt beverages to consumers at the brewery, can sell to consumers at the brewery, to wholesalers, retailers and importers from fewer than 310,000 gallons to fewer than 100,000 barrels.***

CURRENT LAW: Currently a holder of a brewery permit may, where the sale of malt beverages is generally permitted, sell malt beverages at the brewery upon receiving an on-premises malt beverage permit. The brewery can also obtain a wholesale malt beverage permit to sell, deliver and ship at wholesale only malt beverages manufactured by the brewery. These activities are permitted only so long as the brewery sells less than 310,000 gallons of malt beverages per year.

BILL ANALYSIS: The bill would increase the annual limit that a brewery can sell under this arrangement from 310,000 gallons (approximately 9841 barrels) to 100,000 barrels (3,150,000 gallons). The official U.S. definition of a barrel for beer and wine purposes is 31.5 gallons.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 847

Short Title:	Clarify Fees Charged to Residential Tenants.	(Public)
Sponsors:	Senator Gulley.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY LATE AND ADMINISTRATIVE FEES CHARGED TO RESIDENTIAL TENANTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-46 reads as rewritten:

"**§ 42-46. Late fees.**

(a) In all residential rental agreements in which a definite time for the payment of the rent is fixed, the parties may agree to a late fee not ~~to exceed fifteen dollars ($15.00) or five percent (5%) of the rental payment, whichever is greater, to be charged by the lessor~~ inconsistent with the provisions of this subsection, to be chargeable only if any rental payment is five days or more than five days late.

(1) If the rent is due in monthly installments, a landlord may charge a late fee not to exceed fifteen dollars ($15.00) or five percent (5%) of the monthly rent, whichever is greater.

(2) If the rent is due in weekly installments, a landlord may charge a late fee not to exceed four dollars ($4.00) or one percent (1%) of the weekly rent, whichever is greater.

(3) If the rent is subsidized by the United States Department of Housing and Urban Development, by the United States Department of Agriculture, by a State agency, by a public housing authority, or by a local government, any late fee shall be calculated on the tenant's share of the contract rent only, and the rent subsidy shall not be included.

(b) A late fee under this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment may not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

(c) ~~Any provision of a residential rental agreement contrary to the provisions of this section is against the public policy of this State and therefore void and unenforceable.~~ In all residential rental agreements, no lease shall require any tenant to

pay any administrative fee or charge for any purpose not specifically authorized by this section.

(d) ~~A lessor shall not charge a late fee to a lessee because of the lessee's failure to pay additional rent for water and sewer services provided pursuant to G.S. 62-110(g).~~ In all actions for summary ejectment under G.S. 42-26, the court may allow qualified landlords to recover, in addition to claims for rent, late fees, damages, and court costs authorized by statute, a reasonable administrative fee for prosecuting successful claims as long as the following requirements are met:

(1) Landlords shall qualify for the administrative fee by proving, by the preponderance of the evidence, to the court all of the following factors:

a. At the time of filing the complaint, the landlord owns or manages no more than 50 dwelling units in the county where the action is brought.

b. The tenant shall be personally served with the summons and complaint at least two days prior to the trial in the small claims court.

c. The landlord shall be the prevailing party on its claims for summary ejectment, rent, or damages.

(2) The administrative fee awarded by the court shall be no greater than fifty dollars ($50.00) for any lease with a rental rate of five hundred dollars ($500.00) or more per month and no greater than twenty-five dollars ($25.00) for leases with a rental rate of less than five hundred dollars ($500.00) per month.

(e) Any provision of a residential rental agreement contrary to the provisions of this section is against the public policy of this State and therefore void and unenforceable. A landlord that puts any prohibited provision in a rental agreement has committed an unfair trade practice, in violation of G.S. 75-1.1.

(f) A lessor shall not charge a late fee to a lessee because of the lessee's failure to pay additional rent for water and sewer services provided pursuant to G.S. 62-110(g)."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 847: Tenant Late Fees/ Early Military Lease Termination.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Gulley
Date:	April 15, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S847-CSRU-16		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 847 would clarify what late fees may be charged to residential tenants and also a member of the armed services who receives temporary duty orders to terminate a lease on 30-days notice in certain situations.***

CURRENT LAW: Currently landlords and tenants can agree to a late fee not to exceed $15 or 5% of the rent, whichever is greater, if the rent is five days or more late. A member of the armed services who is required to move due to a permanent change of station orders more than 50 miles or who is prematurely or involuntarily discharged or released from service, may terminate a lease upon 30-days prior written notice.

BILL ANALYSIS: Section 1 of the bill amends G.S. 42-46(a) clarifying how agreed to late fees may be calculated. For monthly rent payments, the current limit of $15 or 5% of the monthly rent, whichever is greater, still applies. The bill clarifies that for weekly rent payments, the limit is $4 or 5% of the weekly rent, whichever is greater. This subsection is also amended to clarify that when part of the rent is paid by a governmental entity, any late fee only applies to the tenant's share of the rent, not the subsidized portion of the rent.

Section 2 amends G.S. 42-45(a) to add an additional ground for a member of the armed services to be able to terminate a lease based on 30-days prior written notice. The amendment would add situations where the service member receives temporary duty orders in excess of 3 months duration to move 50 miles or more from the location of the rental property.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 847
PROPOSED COMMITTEE SUBSTITUTE S847-CSRU-16 [v.3]

4/14/2003 4:03:27 PM

Short Title: Tenant Late Fees/Early Military Lease Term. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY LATE FEES CHARGED TO RESIDENTIAL TENANTS AND TO PERMIT MILITARY PERSONNEL DEPLOYED ON CERTAIN TEMPORARY ASSIGNMENTS TO TERMINATE RENTAL AGREEMENTS EARLY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-46(a) reads as rewritten:

"(a) In all residential rental agreements in which a definite time for the payment of the rent is fixed, the parties may agree to a late fee not ~~to exceed fifteen dollars ($15.00) or five percent (5%) of the rental payment, whichever is greater, to be charged by the lessor~~ inconsistent with the provisions of this subsection, to be chargeable only if any rental payment is five days or more late. If the rent:

(1) Is due in monthly installments, a landlord may charge a late fee not to exceed fifteen dollars ($15.00) or five percent (5%) of the monthly rent, whichever is greater.

(2) Is due in weekly installments, a landlord may charge a late fee not to exceed four dollars ($4.00) or five percent (5%) of the weekly rent, whichever is greater.

(3) Is subsidized by the United States Department of Housing and Urban Development, by the United States Department of Agriculture, by a State agency, by a public housing authority, or by a local government, any late fee shall be calculated in accordance with subdivisions (1) and (2) of this subsection on the tenant's share of the contract rent only, and the rent subsidy shall not be included."

SECTION 2. G.S. 42-45(a) reads as rewritten:

"(a) Any member of the United States Armed Forces who (i) is required to move pursuant to permanent change of station orders to depart 50 miles or more from the location of the dwelling unit, ~~or (ii)~~(ii) has received temporary duty orders in excess of

three months duration to depart 50 miles or more from the location of the dwelling unit, or (iii) is prematurely or involuntarily discharged or released from active duty with the United States Armed Forces, may terminate his rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the member's commanding officer."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 847
PROPOSED COMMITTEE SUBSTITUTE S847-PCS65267-RU-16

Short Title: Tenant Late Fees/Early Military Lease Term. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY LATE FEES CHARGED TO RESIDENTIAL TENANTS AND TO PERMIT MILITARY PERSONNEL DEPLOYED ON CERTAIN TEMPORARY ASSIGNMENTS TO TERMINATE RENTAL AGREEMENTS EARLY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-46(a) reads as rewritten:

"(a) In all residential rental agreements in which a definite time for the payment of the rent is fixed, the parties may agree to a late fee not ~~to exceed fifteen dollars ($15.00) or five percent (5%) of the rental payment, whichever is greater, to be charged by the lessor~~ inconsistent with the provisions of this subsection, to be chargeable only if any rental payment is five days or more late. If the rent:

(1) Is due in monthly installments, a landlord may charge a late fee not to exceed fifteen dollars ($15.00) or five percent (5%) of the monthly rent, whichever is greater.

(2) Is due in weekly installments, a landlord may charge a late fee not to exceed four dollars ($4.00) or five percent (5%) of the weekly rent, whichever is greater.

(3) Is subsidized by the United States Department of Housing and Urban Development, by the United States Department of Agriculture, by a State agency, by a public housing authority, or by a local government, any late fee shall be calculated in accordance with subdivisions (1) and (2) of this subsection on the tenant's share of the contract rent only, and the rent subsidy shall not be included."

SECTION 2. G.S. 42-45(a) reads as rewritten:

"(a) Any member of the United States Armed Forces who (i) is required to move pursuant to permanent change of station orders to depart 50 miles or more from the location of the dwelling unit, ~~or (ii)~~(ii) has received temporary duty orders in excess of

three months duration to depart 50 miles or more from the location of the dwelling unit, or (iii) is prematurely or involuntarily discharged or released from active duty with the United States Armed Forces, may terminate his rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord must be accompanied by either a copy of the official military orders or a written verification signed by the member's commanding officer."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 510

Short Title:	Safety at Automatic Teller Machines.	(Public)
Sponsors:	Senators Reeves; and Carpenter.	
Referred to:	Commerce.	

March 24, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE INCREASED CUSTOMER SAFETY MEASURES AT UNMANNED AUTOMATIC TELLER MACHINES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-63(d1) reads as rewritten:

"(d1) Subject to such rules and regulations as may be prescribed by the State Banking Commission with regard to ~~their~~ the use, maintenance and ~~supervision,~~ supervision of, and the safety of the public while operating or using terminals, devices, and machines authorized by this subsection, any bank may establish off the premises of any principal office, branch or limited service facility a customer-bank communications terminal, point-of-sale terminal, automated teller machine, automated banking facility or other direct or remote information-processing device or machine, whether manned or unmanned, through or by means of which information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise, to or from a bank or other nonbank terminal; and the establishment and use of such a device or machine shall not be deemed a branch or limited service facility, and the capital requirements and standards for approval of a branch or limited service facility, all as set forth in subsections (b) and (c) of this section, shall not be applicable to the establishment of any such off-premises terminal device or machine."

SECTION 2. G.S. 54B-77(a) reads as rewritten:

"(a) In addition to the powers granted under this Chapter, any savings and loan association incorporated or operated under the provisions of this Chapter is herein authorized to:

(1) Establish off the premises of any principal office or branch a customer communications terminal, point-of-sale terminal, automated teller machine, automated or other direct or remote information-processing device or machine, whether manned or unmanned, through or by means of which funds or information relating to any financial service or transaction rendered to the public is stored and transmitted,

instantaneously or otherwise to or from an association terminal or terminals controlled or used by or with other parties; and the establishment and use of such a device or machine shall not be deemed to constitute a branch office and the capital requirements and standards for approval of a branch office as set forth in the statutes and regulations, shall not be applicable to the establishment of any such off-premises terminal, device or machine; and associations may through mutual consent share on-premises unmanned automated teller machines and cash dispensers. The Commissioner of Banks may prescribe rules and regulations with regard to the application for permission for use, maintenance and supervision ~~of said~~ of, and the safety of the public while operating or using terminals, devices and ~~machines;~~ machines authorized by this subdivision;"

SECTION 3. G.S. 54C-146(a)(1) reads as rewritten:

"(a) In addition to the powers granted under this Chapter, but subject to any rules that the Commissioner of Banks may prescribe, a savings bank incorporated or operated under this Chapter may:

(1) Establish off the premises of any principal office or branch a customer communications terminal, point of sale terminal, automated teller machine, automated or other direct or remote information processing device or machine, whether manned or unmanned, through or by means of which funds or information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise to or from a savings bank terminal or terminals controlled or used by or with other parties. The establishment and use of a device or machine is not deemed to constitute a branch office, and the capital requirements and standards for approval of a branch office as set forth in the statutes and regulations are not applicable to the establishment of any off-premises terminal, device or machine. Savings banks may, through mutual consent, share on-premises, unmanned, automated teller machines and cash dispensers. The Commissioner of Banks shall adopt rules that provide for the safety of the public while operating or using terminals, devices, and machines authorized by this subdivision."

SECTION 4. On or before October 1, 2003, the Commissioner of Banks shall adopt temporary rules to provide for the safety and protection of the public while operating or using customer communications terminals, point-of-sale terminals, automated teller machines, automated banking facilities, and other direct or remote information processing devices and machines. In particular, the Commissioner shall adopt temporary rules to require that the terminals, devices, and machines be equipped with (i) safeguards such as posts or other barriers to prevent motor vehicles from intruding into the area where customers stand to use or operate the terminals, devices, and machines and (ii) intercoms, radios, or other means for customers to request and receive emergency assistance.

SECTION 5. This act is effective when it becomes law.

SENATE BILL 510:
Safety at Automated Teller Machines.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Sen. Reeves
Date:	April 15, 2003	**Summary by:**	Karen Cochrane Brown
Version:	Proposed Committee Substitute S510-CSRO-9[v.2]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 510 directs the State Banking Commission and the Administrator of Credit Unions to adopt rules to be followed by the owners of freestanding automated teller machines to provide safety and protection for members of the public who use the machines. The PCS also directs the Commission and the Administrator to adopt temporary rules within 180 days of the effective date of this act, and to provide reasonable notice and hearing.***

CURRENT LAW:

Under current law, the Banking Commission has authority to adopt rules regarding the use, maintenance and supervision of off premises automated teller machines, as well as a number of other banking services. However, there is no specific provision requiring the Commission to provide for the safety and protection of customer's using these machines.

BILL ANALYSIS:

The PCS directs the Banking Commission to adopt rules to attempt to provide safety and protection to the public while using off premise freestanding ATMs. The rules must establish safety criteria to be followed by the owners of ATMs. The owners may be banks, thrift institutions, or other businesses. In addition, the Commission must consider the cost of compliance and the impact that cost could have on fees charged for use of the machines. The bill specifically directs that the rules should be made to apply to all owners of ATMs, except credit unions. Section 2 of the bill imposes a similar direction upon the Administrator of Credit Unions.

Section 3 directs the Commission and the Administrator to adopt the rules required in this act as temporary rules within 180 days of the effective date. The Administrative Procedure Act authorizes the use of temporary rules when the rules are required by a recent act of the General Assembly, such as this act. Temporary rules can be adopted more quickly and with less public notice and comment than permanent rules, but a temporary rule expires after 270 days if a permanent rule has not been adopted to replace it. This bill provides that the Commission and the Administrator must give the public at least 30 days notice before adopting the rules and must accept public comment and hold at least one public hearing. The Commission and the Administrator are instructed to coordinate their efforts so that the rules will be consistent for all owners, to the greatest extent possible.

The act would become effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 510
PROPOSED COMMITTEE SUBSTITUTE S510-CSRO-9 [v.2]

4/14/2003 7:15:34 PM

Short Title: Safety at Automatic Teller Machines. (Public)

Sponsors:

Referred to:

March 24, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE STATE BANKING COMMISSION AND THE ADMINISTRATOR OF CREDIT UNIONS TO ADOPT RULES CONCERNING CUSTOMER SAFETY MEASURES WITH RESPECT TO AUTOMATED TELLER MACHINES LOCATED IN AREAS WHERE THERE IS VEHICULAR TRAFFIC.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 53 of the General Statutes is amended by adding a new section to read:

"**§ 53-62.1. Criteria for safety at automated teller machines.**

The State Banking Commission shall adopt rules setting forth the criteria to be followed by the owners of automated teller machines in providing for the safety and protection of the public while operating or using those machines. The rules shall apply only to automated teller machines that are located off-premises of the owner and that are (i) free-standing, (ii) designed to be used by customers on foot, and (iii) located in a parking lot or otherwise exposed to vehicular traffic. The rules shall not apply to automated teller machines designed for use by the customer from the customer's vehicle. In drafting the rules, the State Banking Commission shall take into consideration the variations that exist in the manner in which automated teller machines may be positioned for the convenience of the public. The Commission shall also consider the cost of compliance with the rules and the impact that cost could have on fees charged for use of the machines. The rules adopted by the Commission shall apply to all automated teller machines, regardless of the ownership of the machines, except the rules shall not apply to automated teller machines owned or operated by credit unions."

SECTION 2. G.S. 54-109.11 is amended by adding a new subdivision to read:

"(6) Adopt rules setting forth the criteria to be followed by credit unions operating automated teller machines in providing for the safety and protection of the public while operating or using those machines. The rules shall apply only to automated teller machines that are located off-premises of the owner and that are (i) free-standing, (ii) designed to be used by customers on foot, and (iii) located in a parking lot or otherwise exposed to vehicular traffic. The rules shall not apply to automated teller machines designed for use by the customer from the customer's vehicle. In drafting the rules, the Administrator of Credit Unions shall take into consideration the variations that exist in the manner in which automated teller machines may be positioned for the convenience of the public. The Administrator shall also consider the cost of compliance with the rules and the impact that cost could have on fees charged for use of the machines."

SECTION 3. The State Banking Commission and the Administrator of Credit Unions shall adopt temporary rules pursuant to Sections 1 and 2 of this act within 180 days of the effective date of this act. At least 30 days prior to adopting temporary rule pursuant to this act, the Commission and the Administrator shall (1) notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of the Commission's or Administrator's intent to adopt a temporary rule; (2) accept oral and written comments on the proposed temporary rule; and (3) hold at least one public hearing on the proposed temporary rule. In adopting the rules, the State Banking Commission and the Administrator of Credit Unions shall coordinate their efforts so that, to the greatest extent possible, the rules adopted will be consistent for all owners of automated teller machines.

SECTION 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 510
PROPOSED COMMITTEE SUBSTITUTE S510-PCS65262-RO-9

Short Title: Safety at Automatic Teller Machines. (Public)

Sponsors:

Referred to:

March 24, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE STATE BANKING COMMISSION AND THE ADMINISTRATOR OF CREDIT UNIONS TO ADOPT RULES CONCERNING CUSTOMER SAFETY MEASURES WITH RESPECT TO AUTOMATED TELLER MACHINES LOCATED IN AREAS WHERE THERE IS VEHICULAR TRAFFIC.

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SECTION 3. The State Banking Commission and the Administrator of Credit Unions shall adopt temporary rules pursuant to Sections 1 and 2 of this act within 180 days of the effective date of this act. At least 30 days prior to adopting temporary rules pursuant to this act, the Commission and the Administrator shall (i) notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of the Commission's or Administrator's intent to adopt a temporary rule; (ii) accept oral and written comments on the proposed temporary rule; and (iii) hold at least one public hearing on the proposed temporary rule. In adopting the rules, the State Banking Commission and the Administrator of Credit Unions shall coordinate their efforts so that, to the greatest extent possible, the rules adopted will be consistent for all owners of automated teller machines.

SECTION 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 1

SENATE BILL 676

Short Title:	Revise the Banking Laws of North Carolina.	(Public)
Sponsors:	Senator Hoyle.	
Referred to:	Commerce.	

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE BANKING LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-1(3a) reads as rewritten:

"(3a) Limited Service Facility. – The term "limited service facility" means ~~an office of a bank~~ a staffed physical location open to the public in this State in which ~~deposits are received, monies are paid, or other duties and functions of a teller are performed. Loan applications shall be taken in a limited service facility but notes may not be executed nor loan proceeds disbursed in a limited service facility.~~ a bank established under the laws of this State or a bank or other depository institution established under the laws of any other state conducts any activity of a "branch" set forth in subdivision (1a) of this section, but which is not considered a branch by virtue of the fact that the bank does not engage in all activities of a branch at the location. A location is a limited service facility of a bank notwithstanding that it is operated by a third party if there exists an agreement between the third party and the bank pursuant to which the third party (i) takes deposits or offers loans as an agent of the bank or in the bank's name; or (ii) is obligated to sell or otherwise transfer to the bank all or a substantial portion of the loan or deposit production of that location."

SECTION 2. G.S. 53-17.2(e) reads as rewritten:

"(e) In the absence of the promulgation of rules under subsection (d), the conditions to be met for approval of the application for conversion should include the following:

(1) Condition. The applicant's general condition must reflect adequate capital, liquidity, reserves, earnings, and asset composition necessary for safe and sound operation of the resulting bank.

(2) Management. The management and the board of directors must be capable of supervising a sound banking operation and overseeing the changes that must be accomplished in the conversion from an association or savings bank to a bank.

(3) Public Convenience. The ~~Commission must determine that the~~ conversion will have a positive impact on the convenience of the public and will not substantially reduce the services available to the public in the market area.

(4) Transition. Within a reasonable time after the effective date of the conversion, the resulting bank must divest itself of all assets and liabilities that do not conform to State banking law or rules. The length of this transition period shall be determined by the Commissioner and shall be specified when the application for conversion is approved.

In evaluating each of these conditions, the ~~Commission~~ Commissioner shall consider a comparison of the relevant financial ratios of the applicant with the average ratios of North Carolina banks of similar asset size. The ~~Commission may~~ Commissioner shall not approve a conversion where the applicant presents an undue supervisory concern or has not been operated in a safe and sound manner."

SECTION 3. G.S. 53-17.2(f) reads as rewritten:

"(f) If the ~~State Banking Commission~~ Commissioner approves the plan of conversion, then the association or savings bank shall submit the plan to the stockholders or members as provided in subsection (g). After approval of the plan of conversion, the Commissioner of Banks shall supervise and monitor the conversion process and shall ensure that the conversion is conducted pursuant to law and the association's or savings bank's approved plan of conversion."

SECTION 4. G.S. 53-43 reads as rewritten:

"**§ 53-43. ~~General powers.~~ Powers.**

~~In addition to the powers conferred by law upon private corporations, banks shall have the power:~~

~~(1) To exercise by its board of directors, or duly authorized officers and agents, subject to law, all such powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of indebtedness, by receiving deposits, by buying and selling exchange, coin, and bullion, and by loaning money on personal security or real and personal property. Such corporation at the time of making loans may not take and receive interest or discounts in advance where the effective rates of interest or discounts collected shall exceed the maximum rates of interest provided under this section, G.S. 24-1.1 and 24-1.2 if such interest or discount had not been collected in advance.~~

~~(2) To adopt regulations for the government of the corporation not inconsistent with the Constitution and laws of this State.~~

~~(3) To purchase, hold, and convey real estate for the following purposes:~~

~~a. Such as shall be necessary for the convenient transaction of its business, including furniture and fixtures, with its banking offices and other spaces to rent as a source of income, which investment shall not exceed fifty percent (50%) of its unimpaired capital fund: Provided, that this fifty percent (50%) limitation shall not apply to banking houses, furniture and fixtures leased for the purposes set forth in this subdivision. Provided, further, that if any bank shall demonstrate to the satisfaction of the Commissioner of Banks that an investment of more than fifty percent (50%) of its unimpaired capital fund in its banking houses, furniture and fixtures, would promote the convenience of the general public in transacting its banking business and would not adversely affect the financial stability of the bank, the Commissioner of Banks may, in his discretion, authorize any bank to invest more than fifty percent (50%) of its unimpaired capital fund in its banking houses, furniture and fixtures.~~

~~b. Such as is mortgaged to it in good faith by way of security for loans made or moneys due to such banks.~~

~~c. Such as has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, or on judgments or decrees obtained and rendered for debts due to it, or in settlements affecting security of such debts. All real property referred to in this subdivision shall be sold by such bank within five years after it is acquired unless, upon application by the board of directors, the Commissioner of Banks extends the time within which such sale shall be made. Any and all powers and privileges heretofore granted and given to any person, firm, or corporation doing a banking business in connection with a fiduciary and insurance business, or the right to deal to any extent in real estate, inconsistent with this Chapter, are hereby repealed.~~

~~(4) Nothing contained in this section shall be deemed to authorize banking corporations to engage in the business of dealing in investment securities: Provided, however, that the term "dealing in investment securities" as used herein, shall not be deemed to include the purchasing and selling of securities without recourse, solely upon order, and for the account of, customers; and provided further, that "investment securities," as used herein, shall not be deemed to include obligations of the United States, or general obligations of any state or of any political subdivision thereof, or of cities, towns, or other corporate municipalities of any state or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the federal home loan banks or the Home Owner's Loan Corporation.~~

~~Any provision in conflict with this subdivision contained in the articles of incorporation heretofore issued to any banking corporation is hereby revoked.~~

~~(5) Repealed by Session Laws 1989, c. 187, s. 5.~~

~~(6) Maintain separate departments and deposit in its commercial department to the credit of its trust department all uninvested fiduciary funds of cash and secure, under rules and regulations of the State Banking Commission, all such deposits in the name of the trust department whether in consolidated deposits or for separate fiduciary accounts, by segregating and delivering to the trust department such securities as may be eligible for the investment of the sinking funds of the State of North Carolina, equal in market value to such deposited funds, or readily marketable commercial bonds having not less than a recognized "A" rating equal to one hundred and twenty-five per centum (125%) of such deposits. Such securities shall be held by the trust department as security for the full payment or repayment of all such deposits, and shall be kept separate and apart from other assets of the trust department. Until all of such deposits shall have been accounted for to the trust department or to the individual fiduciary accounts, no creditor of the bank shall have any claim or right to such security. When fiduciary funds are deposited by the trust department in the commercial department of the bank, the deposit thereof shall not be deemed to constitute a use of such funds in the general business of the bank and the bank in such instance shall not be liable for interest on such funds. To the extent and in the amount such deposits may be insured by the Federal Deposit Insurance Corporation, the amount of security required for such deposits by this section may be reduced.~~

~~The Banking Commission shall have power to make such rules and regulations as it may deem necessary for the enforcement of the provisions of the preceding paragraph, and such authority shall exist and is hereby conferred under the general authority heretofore conferred upon said Commission as well as by this paragraph.~~

~~(7) To issue, advise and confirm letters of credit authorizing the beneficiaries thereof to draw upon the institution or its correspondents.~~

~~(8) To receive money for transmission.~~

~~(9) To become a member of a clearinghouse association and to pledge assets required for its qualification.~~

~~(10) To provide for the performance of bank service corporation services, such as data processing services and bookkeeping, subject to such rules and regulations as may be adopted by the State Banking Commission.~~

(a) General Powers. – Except as otherwise specifically provided by this Chapter, a bank shall have the powers conferred upon corporations by the North Carolina Business Corporation Act, Chapter 55 of the General Statutes, including the power to:

(1) Carry on the business of banking.
(2) Make any investments authorized by G.S. 53-47 or any other section of this Chapter.
(3) Engage in any other activities approved by rule, order, or interpretation of the Commissioner of Banks.

For the purposes of this section, the "business of banking" includes, without limitation, discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of indebtedness; receiving deposits; issuing, advising, and confirming letters of credit; receiving money for transmission; and loaning money on personal security or real or personal property.

(b) Parity Powers. – A bank also has the power to engage:
(1) As principal in any activity permissible for a national bank under any law, including the National Bank Act, 12 U.S.C. § 21, as well as activities recognized as permissible for a national bank in any regulation, official circular, bulletin, order or written interpretation issued by the Office of the Comptroller of the Currency.
(2) As principal in any activity that is permissible, or determined by the Federal Deposit Insurance Corporation to be permissible, for a bank under the Federal Deposit Insurance Act, 12 U.S.C. § 1813, and regulations thereunder.
(3) As principal in any activity that is permissible for a savings and loan association or savings bank organized, respectively, under Chapters 54B and 54C of the General Statutes, or that is permissible for a federally chartered savings association or federally chartered savings bank under the Home Owners' Loan Act of 1933, 12 U.S.C. § 1461 through §1468 and regulations thereunder.
(4) In "trust business", as that term is defined by G.S. 53-301(50).
(5) In any activity other than as principal pursuant to the Federal Deposit Insurance Act, 12 U.S.C. § 1813, and regulations thereunder.

(c) Incidental Powers. – In addition to the other powers described in this section, a bank has the power to exercise all other powers that are reasonably necessary, convenient, or complementary to the exercise of the powers authorized in subsections (a) and (b) of this section.

(d) Prior Approval Required. – Except as provided in subsection (e) of this section, a bank which proposes to engage in any new activity shall apply to the Commissioner of Banks for approval to engage in the activity before its commencement. If the activity will be conducted in a subsidiary in which the bank intends to make an investment, the bank shall apply to the Commissioner of Banks for approval to engage in the activity before entering into the investment. The bank shall not engage in the activity or make the investment unless and until the Commissioner of Banks issues a written approval of the application. For the purpose of this subsection, the terms "subsidiary" and "investment" have the same meanings as set forth in G.S. 53-47.

An application for approval shall contain a description of the proposed activity and any other information required by the Commissioner of Banks. A copy of any notice or application the bank is required to file with any federal banking regulator shall also be provided to the Commissioner of Banks.

For the purposes of this section, a "new activity" is any business activity in which the bank is not currently engaged. The extension or relocation of an existing activity into a new department, division, or subsidiary of the bank shall not be considered a "new activity"; provided, however, that any investment in a subsidiary shall be subject to all applicable provisions of this Chapter pertaining to investments by banks, including G.S. 53-47.

(e) Exceptions. – No application for approval to engage in a new activity shall be required, provided all of the following conditions are met as of the date the activity is commenced:

(1) The activity is one described in subsections (a), (b), or (c) of this section.

(2) The bank has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with its most recent examination.

(3) No notice or application to engage in the activity is required to be filed by the bank with any federal banking regulator.

A bank commencing an activity without prior application and approval pursuant to this subsection shall notify the Commissioner of Banks in writing of the commencement of the activity no later than the 30th day after the earlier of (i) commencing the activity; or (ii) if applicable, making an investment in an entity through which the activity is to be conducted.

(f) Continuing Authority of the Commissioner of Banks. – Nothing in this section shall be construed as being in derogation of the Commissioner of Banks' ongoing authority under this Chapter to take corrective action regarding the activities of any bank which the Commissioner deems appropriate in order to ensure the continued integrity, safety, and soundness of an individual bank and the State banking system in general."

SECTION 5. G.S. 53-47 reads as rewritten:

"**§ 53-47. Limitations on ~~investments in stocks.~~subsidiary and other investments.**

(a) In addition to any powers or investments authorized by any other section of this Chapter, a bank may invest in the capital stock or other securities of any other state, national or foreign bank or trust company, and in any other industrial bank, savings bank, Morris Plan bank, savings and loan association, bankers' bank or other deposit taking entity chartered or existing under any federal, state, or foreign law including, but not limited to, the capital stock of clearing corporations defined in G.S. 25-8-102, the capital stock or other securities of central reserve banks whose capital stock exceeds one million dollars ($1,000,000) and the capital stock of an Edge or Agreement corporation. As used in this Chapter, the term "bankers' bank" means an insured depository financial institution, organized and chartered to do business exclusively with other banks and savings institutions, and the stock of which, or the stock of the holding company which

controls such bank, is owned exclusively (except to the extent directors' qualifying shares are required by law) by banks or savings institutions. To constitute a central reserve bank as contemplated by this Chapter, at least fifty percent (50%) of the capital stock of such bank shall be owned by other banks. The investment of any bank in the capital stock of such central reserve bank or bank organized under the "Edge Act", (12 U.S.C. § 611 et seq.) shall at no time exceed ten percent (10%) of the paid-in capital and permanent surplus of the bank making the investment.

(b) ~~A bank may invest, without limitation, in a corporation, firm, partnership, or company:~~

~~(1) Which is a bank operating subsidiary, or~~

~~(2) To protect the bank from loss.~~

A bank may make an investment in a subsidiary that will be operated as a bank operating subsidiary or as a DPC subsidiary. Investments made pursuant to this subsection shall not be subject to the seventy-five percent (75%) of unimpaired capital fund limit contained in subsection (c) of this section.

(c) ~~In addition to the foregoing, upon 30 days prior written notice to the Commissioner of Banks, providing such detail as the Commissioner may require, a~~ A bank may ~~invest,~~ invest up to, in the aggregate, ~~up to~~ seventy-five percent (75%) of its unimpaired capital fund in ~~the stock or assets of other corporations, firms, partnerships, or companies which are:~~ subsidiaries which are or will be primarily engaged in:

(1) ~~Primarily engaging in activities~~ Activities permissible for national banks or bank holding companies under applicable laws, rules, regulations or orders;

(2) ~~Primarily engaging in activities of a financial nature,~~ Activities that are financial in nature or incidental to a financial activity, including the transmission or processing of information or data relating to such activities. For the purpose of this subsection, activities ~~of a financial nature shall include, but not be limited to,~~ that are financial in nature include insurance activities, all forms of securities activities, including underwriting, distribution, and brokerage, ~~together with such~~ and any other activities as the Commissioner of Banks shall determine by ~~regulation~~ rule or order; or

(3) ~~Engaging in any other activity approved by the Commissioner of Banks.~~ Other activities determined by the Commissioner of Banks to be permissible for a bank or a bank operating subsidiary.

(c1) A bank operating subsidiary may make an investment of any size in a lower tier subsidiary.

(c2) A bank or bank operating subsidiary proposing to make an investment described in subsection (b), (c), or (c1) of this section shall give prior written notice to the Commissioner of Banks, providing such detail as the Commissioner may require. Unless the Commissioner of Banks, within 30 days following receipt of the notice, notifies the bank or bank operating subsidiary that the Commissioner objects to the proposed investment, the bank or bank operating subsidiary may complete the investment. However, the Commissioner of Banks may extend the period within which

to object to the proposed investment if the Commissioner determines that it raises issues which require additional information or additional time for analysis. If the objection period is so extended, the bank or bank operating subsidiary may proceed with respect to the proposed investment.

(d) Any state or national bank subsidiary which engages in an activity subject to licensure and/or regulation under other than Chapter 53 of the General Statutes shall be subject to licensure and/or regulation on a basis that does not arbitrarily discriminate by the appropriate regulatory agency which licenses and/or regulates nonbanks which engage in the same activity.

~~(e) Unless otherwise notified by the Commissioner within 30 days following receipt of the written notice, a bank may complete its investment in the stock or assets of the other corporation, firm, partnership, or company, or commence a new activity through an existing subsidiary. The Commissioner may extend the 30-day period if the Commissioner determines that the proposed investment or activity raises issues which require additional information or additional time for analysis. If the 30-day period is extended, the bank may proceed with respect to the proposed investment or activity only upon written approval of the Commissioner of Banks.~~

(f) The Commissioner of Banks shall monitor the impact of investment activities of banks under this section on the safety and soundness of such banks. Any stocks owned or hereafter acquired in excess of the limitations herein imposed shall be disposed of at public or private sale within six months after the date of acquiring the stocks, and if not so disposed of, they shall be charged to profit and loss account, and no longer carried on the books as an asset. The limit of time in which said stocks shall be disposed of or charged off the books of the bank may be extended by the Commissioner of Banks if in the Commissioner's judgment it is for the best interest of the bank that such extension be granted; provided that the limitations imposed in this section on the ownership of stock in or securities of corporations are suspended only to the extent that any bank operating under the supervision of the Commissioner of Banks may subscribe for and purchase shares of stock in or debentures, bonds, or other types of securities of any corporation organized under the laws of the United States for the purposes of insuring to depositors a part or all of their funds on deposit in banks where and to such extent as such stock or security ownership is required in order to obtain the benefits of such deposit insurance for its depositors.

(g) The prior notice requirement of subsection (c2) of this section shall not apply if:

(1) The bank has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with its most recent examination at the time of the investment; and

(2) Each activity of the subsidiary in which the investment is to be made is either:

a. One in which the bank is then engaged or has previously been engaged, directly or through a different subsidiary, and for which all necessary approvals of federal bank regulatory

agencies and of the Commissioner of Banks have previously been obtained and remain in effect; or

b. One for which no prior notice or application for approval to any federal banking regulator is required.

A bank that makes an investment pursuant to the exception created by this subsection shall nevertheless notify the Commissioner of Banks in writing of the investment within 30 days thereafter.

(h) A bank may invest through purchase, lease, or otherwise in any interest in bank premises, furniture, equipment, and fixtures as may be necessary for the convenient transaction of its business. The total of all investments authorized by this subsection shall not exceed fifty percent (50%) of the bank's unimpaired capital fund; provided, however, that the value of leased bank premises, furniture, equipment, and fixtures shall be included in the bank's total investments only to the extent that the related lease may be capitalized under current generally accepted accounting principles consistently applied.

If any bank demonstrates to the satisfaction of the Commissioner of Banks that an investment of more than fifty percent (50%) of its unimpaired capital fund in its bank premises, furniture, equipment, and fixtures would promote the convenience of the general public in transacting its banking business and would not adversely affect the financial stability of the bank, the Commissioner of Banks may authorize the bank to invest more than fifty percent (50%) of its unimpaired capital funds in its bank premises, furniture, equipment, and fixtures.

(i) A bank may purchase, hold, and convey real estate other than bank premises for the following purposes:

(1) As security for loans made or moneys due to it when that real estate has been mortgaged to it in good faith.

(2) When the real estate has been purchased at sales upon foreclosures of mortgages and deeds of trust held or owned by it, on judgments or decrees obtained and rendered for debts due to it, or in settlements affecting security of those debts. All real property referred to in this subdivision shall be sold by the bank within five years after it is acquired unless, upon application by the board of directors, the Commissioner of Banks extends the time within which the sale shall be made.

(j) Nothing in this section shall be construed as being in derogation of the Commissioner of Banks' ongoing authority under this Chapter to take corrective action regarding the activities of any bank which the Commissioner deems appropriate in order to ensure the continued integrity, safety, and soundness of an individual bank and the State banking system in general.

(k) The following definitions apply in this section:

(1) "Bank operating subsidiary" means a subsidiary which:

a. Is under the control of a bank; and

b. Engages only in activities in which a bank may engage pursuant to G.S. 53-43.

(2) "Bank premises" means any improved or unimproved real estate, whether or not open to the public, which is utilized, intended to be utilized, or has previously been utilized in connection with any activity or business in which the bank is or was engaged or intends to be engaged.

(3) "Control" means an ownership interest in a subsidiary which:

a. Constitutes more than fifty percent (50%) of the total ownership interests in the subsidiary; or

b. Constitutes fifty percent (50%) or less of the total ownership interests in the subsidiary but is required to be consolidated with the bank pursuant to generally accepted accounting principles.

(4) "DPC subsidiary" means any subsidiary in which the bank has acquired in good faith an ownership interest through foreclosure or other realization on collateral by way of a compromise of a disputed or contested claim or to avoid a loss in connection with a debt previously contracted.

(5) "Lower-tier subsidiary" means any bank operating subsidiary in which a bank operating subsidiary has an ownership interest.

(6) "Ownership interest" means any beneficial equity or similar interest, whether direct or indirect, including stock, limited or general partnership interests, or shares in a limited liability company.

(7) "Subsidiary" means any corporation, partnership, business trust, association, joint venture, pool, syndicate, limited liability company, or any other similar business organization in which a bank has an ownership interest."

SECTION 6. G.S. 53-48 reads as rewritten:

"**§ 53-48. Limitation of loans.**

(a) The total loans and extensions of credit, both direct and indirect, by a bank to a person, other than a municipal corporation for money borrowed, including in the liabilities of a firm the liabilities of the several members thereof, outstanding at one time and not fully secured, as determined in a manner consistent with subsection (b) of this section, by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed the greater of fifteen percent (15%) of the unimpaired capital fund of the ~~bank.~~ bank or the percentage permitted for national banks in this State or by statute or regulation of the Comptroller of the Currency.

(b) The total loans and extensions of credit, both direct and indirect, by a bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the ~~funds~~ loan or extension of credit outstanding shall not exceed the greater of ten percent (10%) of the unimpaired capital fund of the ~~bank.~~ bank or the percentage permitted for national banks by statute or regulation of the Comptroller of the Currency. This limitation shall be separate from and in addition to the limitation contained in subsection (a) ~~above.~~ of this section.

(c) The discount of bills of exchange drawn in good faith against actual existing values, the discount of solvent trade acceptances or other solvent commercial or business paper actually owned by the person negotiating the same, loans or extensions of credit secured by a segregated deposit account in the lending bank, the purchase of bankers acceptances of the kind described in section 13 of the Federal Reserve Act and issued by other banks, and the purchase of any notes and the making of any loans, secured by not less than a like face amount of bonds of the United States, or an agency of the United States, or other obligations guaranteed by the United States Government, or State of North Carolina or certificates of indebtedness of the United States, or agency thereof, or other obligations guaranteed by the United States Government, shall not be considered as money borrowed within the meaning of this section: Provided, however, that the limitations of this section shall not apply to loans or obligations to the extent that they are secured or covered by guarantees or by commitments or agreements to take over or purchase the same, made by any federal reserve bank or by the United States or any department, board, bureau, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States.

(d) For purposes of this section, the term "person" shall be deemed to include an individual, or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any other form of entity not specifically listed herein. Loans or extensions of credit to one person include loans made to other persons when the proceeds of the loans or extensions of credit are to be used for the direct benefit of the first person or the persons are engaged in a common enterprise. The Commissioner of Banks shall monitor the lending activities of banks under this section for undue credit concentrations and inadequate risk diversification which could adversely affect the safety and soundness of such banks."

SECTION 7. G.S. 53-62 reads as rewritten:

"**§ 53-62. Establishment of branches; limited service facilities; and off-premises customer-bank communications terminals.**

(a) The word "capital" as used in this section means capital stock and unimpaired surplus.

(b) ~~A bank doing business under this Chapter may establish branches or limited service facilities within this State after having first obtained the written approval of the Commissioner of Banks, which approval may be given or withheld by the Commissioner of Banks, in his discretion. The Commissioner of Banks, in exercising such discretion, shall take into account, but not by way of limitation, such factors as the financial history and condition of the applicant bank, the adequacy of its capital structure, its future earnings prospects, and the general character of its management. Such approval shall not be given until he shall find (i) that the establishment of such branch or limited service facility will meet the needs and promote the convenience of the community to be served by the bank, and (ii) that the probable volume of business and reasonable public demand in such community are sufficient to assure and maintain the solvency of said branch or limited service facility and of the existing bank or banks in said community.~~ A bank, with the prior written approval of the Commissioner of Banks, may:

(1) Establish a branch or limited service facility; or
(2) Convert an existing limited service facility to a branch.

The application for approval to establish or convert a branch or limited service facility shall be in a form prescribed by the Commissioner of Banks and shall be accompanied by the application fee established by the Banking Commission by rule. Approval may be given or withheld by the Commissioner of Banks. In determining whether to give or withhold approval, the Commissioner of Banks shall take into account factors, including the financial history and condition of the applicant association, the adequacy of its capital structure, its future earnings prospects, and the general character of its management. The Commissioner of Banks shall not give approval pursuant to this subsection unless the Commissioner finds that:

(1) The establishment or conversion of the branch or limited service facility will meet the needs and promote the convenience of the community to be served thereby; and
(2) The probable volume of business and reasonable public demand in the community are sufficient to assure and maintain the solvency of the branch office or limited service facility and of the existing depository institutions in the community.

(c) (1) A branch or limited service facility of a bank shall be operated ~~as a branch or office of and under the name of the bank, and~~ under the control and direction of the board of directors and executive officers of the ~~bank.~~ bank and under the name of the bank as set forth in its Certificate of Incorporation filed with the Office of the Secretary of State, except that the Commissioner of Banks may permit the operation of a branch or limited service facility under an assumed name under the conditions and terms imposed by the Commissioner if the Commissioner of Banks finds that the name will not result in confusion among customers of the bank or among the general public. The board of directors of the bank shall elect such officers as may be required to properly conduct the business of any branch or limited service facility.

(2) The Commissioner of Banks shall not authorize the establishment or conversion of a branch or limited service facility until he is satisfied that the applicant bank has sufficient capital to maintain a minimum capital to asset ratio as the Commissioner of Banks, in his discretion, may require. In determining such ratio the Commissioner of Banks shall give due consideration to (i) the amount of capital required to support the bank's projected growth, (ii) the bank's earnings history and projected earnings, (iii) the quality of the bank's assets, (iv) compliance with the fixed asset limitation contained in ~~G.S. 53-43(3),~~ subsection (f) of this section and (v) the business experience and reputation of bank management.

~~(3) The Commissioner of Banks may, on written application by a bank, in his discretion authorize the bank to establish a limited service facility~~

~~after considering the criteria and making the findings required in subsection (b).~~

(d) ~~A limited service facility, upon written request to the Commissioner of Banks, and after meeting the requirements of subsection (c) may convert to a branch. If branch status is granted then the branch shall be subject to all of the conditions and requirements of that type of banking office.~~

Upon 30 days written notice to the Commissioner of Banks, a bank may discontinue any limited service facility ~~operation; provided, however, if a limited service facility has within five years preceding the proposed closing date been a branch of any bank, it shall comply with the requirements of subsection (c) below before closing.~~ operation.

(d1) Subject to such rules and regulations as may be prescribed by the State Banking Commission with regard to their use, maintenance and supervision, any bank may establish off the premises of any principal office, branch or limited service facility a customer-bank communications terminal, point-of-sale terminal, automated teller machine, automated banking facility or other direct or remote information-processing device or machine, whether manned or unmanned, through or by means of which information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise, to or from a bank or other nonbank terminal; and the establishment and use of such a device or machine shall not be deemed a branch or limited service facility, and the capital requirements and standards for approval of a branch or limited service facility, all as set forth in subsections (b) and (c) of this section, shall not be applicable to the establishment of any such off-premises terminal device or machine.

(e) A bank may, upon resolution by the board of directors, discontinue a branch office subject to the following:

(1) The bank shall notify the Commissioner in writing of its intent to close a branch not later than 90 days prior to the proposed closing date. Such notice shall include a detailed statement of the reasons for the decision to close a branch and statistical or other information in support of such reasons.

(2) The bank shall provide a notice of its intent to close a branch to its customers. Such notice shall be posted in a conspicuous manner on the branch premises for a period of 30 days prior to the proposed closing date, and shall either be included in at least one of any regular account statements mailed to customers of such branch, or in a separate mailing to such customers. The later notice shall be given at least 90 days prior to the proposed closing date.

No branch shall be closed until approved by the Commissioner of Banks, provided, however, the consolidation of two or more branches into a single location in the same vicinity shall not be considered a closure subject to the provisions of this subsection.

(f) Any action taken by the Commissioner of Banks pursuant to this section shall be subject to review by the State Banking Commission which shall have the authority to approve, modify or disapprove any action taken or recommended by the Commissioner of Banks."

SECTION 8. G.S. 53-64 reads as rewritten:

"**§ 53-64. Loans secured by bank's own stock or stock of parent bank holding company.**

(a) It shall be lawful for a bank to make a loan secured by the pledge of its own shares of stock or the stock of its parent holding company; provided that whenever any bank shall exercise its security interest in the shares of the bank or its parent holding company upon a loan default or other transfer, it shall dispose of all of such shares of stock within a period of six months. If such stock has not been disposed of within six months, the same shall be charged to profit and loss and no longer carried as an asset of the bank. The Commissioner may extend the six-month period not to exceed an additional six months.

(b) A bank may not make a loan to finance the purchase of or to carry its stock or the stock of its parent holding company. For purposes of this subsection, the phrase "to carry" shall have the meaning set forth in 12 C.F.R. Part 221, by the Board of Governors of the Federal Reserve System.

(c) A bank may not purchase any portion of its shares of stock, ~~nor the stock of its parent holding company, unless the same is purchased or pledged to the bank to prevent a loss upon a debt previously contracted in good faith. In the event the bank shall become the owner of its shares, or those of its parent holding company, the bank shall dispose of the same as provided in subsection (a) of this section.~~except with the prior approval of the Commissioner. The Commissioner shall not give approval for a bank to purchase any portion of its shares of stock unless the Commissioner determines the bank will remain well-capitalized following the purchase. In approving a purchase, the Commissioner may impose any conditions that are prudent and necessary to protect the interests of the shareholders and creditors of the bank."

SECTION 9. G.S. 53-67 reads as rewritten:

"**§ 53-67. Banks controlled by boards of directors.**

The corporate powers, business, and property of banks doing business under this Chapter shall be exercised, conducted, and controlled by its board of directors, which shall meet at least quarterly. Such board shall consist of not less than five directors, to be chosen by the stockholders, and shall hold office for the term for which they are elected, and until their successors are elected and qualified. The annual meeting of stockholders for the election of directors shall be held at such time as may be designated by the charter or the bylaws of the bank but shall be held not later than ~~the thirtieth day of June in each year.~~ June 30 each year; provided, however, that any bank which has been open for business for fewer than 12 months as of June 30 of the current year shall hold its first annual meeting by not later than June 30 of the following year. In addition to the foregoing powers relating to the fixing of the number and the election of directors, the stockholders of a bank, at any stockholders' meeting, special or annual, may authorize not more than two additional directorships which may be left unfilled and to be filled in the discretion of the directors of the institution during the interval between such stockholders' meetings. Aside from the specific provisions of this section, the number, election, term and classification of the directors of banks doing business under

this Chapter shall be governed by the provisions of the North Carolina Business Corporation Act."

SECTION 10. G.S. 53-99(b)(7b) reads as rewritten:

"(7b) Records of applications, ~~examinations~~ examinations, and investigations of ~~registrants~~ applicants, licensees, and exempt persons under the Mortgage Lending Act, Article 19A of this Chapter;"

SECTION 11. G.S. 53-115 reads as rewritten:

"§ 53-115. State Banking Commission to make rules and regulations.

(a) The State Banking Commission is hereby authorized, empowered and directed to make all necessary rules ~~and regulations, and to give all necessary instructions with respect to such actions of banking corporations which the Commissioner of Banks may authorize, permit and/or direct and require to be conducted under the provisions of G.S. 53-77, 53-114, 53-115, and 53-116. And it shall be the duty of all such banking corporations and their officers, agents and employees, to comply fully with any and all such rules, regulations and instructions, established and promulgated by the State Banking Commission with respect to such banking corporations under the terms of G.S. 53-77, 53-114, 53-115, and 53-116; and such orders, rules, and regulations shall have the same force and effect as rules, regulations and instructions promulgated under the existing banking laws.~~ with respect to the establishment, operation, conduct, and termination of any and all activities and businesses that are subject to licensing, regulation, supervision, or examination by the Commissioner of Banks under this Chapter.

(b) Without limiting the authority conferred by subsection (a) of this section, the State Banking Commission may adopt rules imposing reasonable fees to defray the Commissioner of Banks' expenses incurred in the preparation, reproduction, or delivery of any original or duplicate certificate, license, or other document at the request of any person.

(c) The rulemaking authority conferred on the State Banking Commission by this section shall be in addition to and not in derogation of any specific rule-making authority by any other provision of this Chapter."

SECTION 12. G.S. 53-160 reads as rewritten:

"§ 53-160. License to do business.

Before any such bank or trust company is authorized to act in any fiduciary capacity without bond, it must be licensed by the Commissioner of Banks of the State. For such license the ~~licensee~~ licensee, for the purpose of defraying necessary expenses of the Commissioner of Banks and the Commissioner's agents in supervising and examining the licensee, shall pay to the ~~State Banking Commission an annual license fee of two hundred dollars ($200.00), which shall be remitted to the State Treasurer for the use of the Commissioner of Banks in the supervision of banks and trust companies acting in a fiduciary capacity, insofar as it may be necessary, and the surplus, if any, shall remain in the State treasury for the use of the general fund of the State:~~ Commissioner of Banks all fees required by rule of the State Banking Commission. ~~Provided, however, that a~~ A national bank which has been granted trust powers by the Comptroller of the Currency or his duly authorized agent shall be annually licensed as required in this section and

shall be granted a certificate of solvency which will meet the provisions of G.S. 53-162 without examination by the Commissioner of Banks as required in G.S. 53-161."

SECTION 13. G.S. 53-208.12 reads as rewritten:

"**§ 53-208.12. Quarterly reports.**

A licensee shall file for each calendar quarter, no later than 60 days after the quarter has ended, a report which contains the total number of authorized delegates in this State. In addition, a licensee shall promptly provide any additional information regarding any or all of its current and prior authorized delegates requested by the Commissioner."

SECTION 14. G.S. 53-243.02(c) reads as rewritten:

"(c) The license of a loan officer is not effective during any period when that person is not employed by a mortgage broker or mortgage banker licensed under this Article. The license of an exclusive mortgage broker is not effective during any period when that person is not authorized to act as a single licensee or exempt person pursuant to G.S. 53-243.05(c)(1a).

When a loan officer ceases to be employed by a mortgage broker or mortgage banker licensed under this Article, the loan officer and the mortgage broker or mortgage banker licensed under this Article by whom that person is employed shall promptly notify the Commissioner in writing. When the authority of an exclusive mortgage broker to act on behalf of the principal licensee or exempt person identified in G.S. 53-243.05(c)(1a) has been terminated, the exclusive mortgage broker and the licensee or exempt person for whom the exclusive mortgage broker is an agent shall promptly notify the Commissioner in writing. The mortgage broker, mortgage banker, or exempt person's notice shall include a statement of the specific reason or reasons for, as applicable, the termination of the loan officer's employment or exclusive mortgage broker's authority.

A loan officer shall not be employed simultaneously by more than one mortgage broker or mortgage banker licensed under this Article."

SECTION 15. G.S. 53-243.05(a)(6) reads as rewritten:

"(6) The applicant's consent to a federal and State criminal history record check and a set of the applicant's fingerprints in a form acceptable to the Commissioner. In the case of an applicant that is a corporation, partnership, limited liability company, association, or trust, each individual who has control of the applicant or who is the managing principal or a branch manager shall consent to a federal and State criminal history record check and submit a set of that individual's fingerprints pursuant to this subdivision. Refusal to consent to a criminal history record check ~~may constitute~~ constitutes grounds for the Commissioner to deny licensure to the ~~applicant.~~applicant as well as to any entity (i) by whom or by which the applicant is employed, (ii) over which the applicant has control, or (iii) as to which the applicant is the current or proposed managing principal or a current or proposed branch manager."

SECTION 16. G.S. 53-243.06(b1) reads as rewritten:

"(b1) When required by the Commissioner, ~~the licensee~~ each individual described in G.S. 53-245.05(a)(6) shall furnish to the Commissioner ~~the licensee's~~ his or her consent to a criminal history record check and a set of the ~~licensee's~~ his or her fingerprints in a form acceptable to the Commissioner. Refusal to consent to a criminal history record check may constitute grounds for the Commissioner to deny renewal of ~~licensure to the licensee.~~the license of the person as well as the license of any other person by which he or she is employed, over which he or she has control, or as to which he or she is the current or proposed managing principal or a current or proposed branch manager."

SECTION 17. G.S. 53-243.11 is amended by adding a new subdivision to read:

"(12) To fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by Sections 6 and 10 of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2605 and § 2609, and regulations adopted thereunder by the Secretary of the Department of Housing and Urban Development."

SECTION 18. G.S. 53-243.12(a)(2) reads as rewritten:

"(2) That any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, managing ~~broker,~~ principal, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the applicant or licensee. The person:

a. Has filed an application for license that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.

b. Has violated or failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner.

c. Has been convicted of any felony, or, within the past 10 years, has been convicted of any misdemeanor involving mortgage lending or any aspect of the mortgage lending business, or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing.

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage lending business.

e. Is the subject of an order of the Commissioner denying, suspending, or revoking that person's license as a mortgage broker or mortgage banker.

f. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's

mortgage brokerage or mortgage banking industry denying or revoking that person's license as a mortgage broker or mortgage banking industry or denying or revoking that person's license as a mortgage broker or mortgage banker.

g. Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under G.S. 53-243.05 or any bond or capital requirements under this Article.

h. Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker or mortgage banker who has been subject to an order or injunction described in sub-subdivision d., e., or f. of this subdivision.

i. Has failed to pay the proper filing or renewal fee under this Article. However, the Commissioner may enter only a denial order under this sub-subdivision, and the Commissioner shall vacate the order when the deficiency has been corrected."

SECTION 19. G.S. 53-243.12(g) reads as rewritten:

"(g) If the Commissioner has reasonable grounds to believe that a licensee or other person has violated the provisions of this Article or that facts exist that would be the basis for an order against a licensee or other person, the Commissioner may at any time, either personally or by a person duly designated by the Commissioner, investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of any licensee or other person relating to the complaint or matter under investigation. The Commissioner may require any licensee or other person to submit a consent to a criminal history record check and a set of that person's fingerprints in a form acceptable to the Commissioner in connection with any examination or investigation. Refusal to submit the requested criminal history record check or a set of fingerprints shall be grounds for disciplinary action. The reasonable cost of this investigation or examination shall be charged against the licensee."

SECTION 20. G.S. 53-243.12(k) reads as rewritten:

"(k) If the Commissioner finds that the managing principal, branch manager, or loan officer of a licensee had knowledge of or reasonably should have had knowledge of, or participated in, any activity that results in the entry of an order under this section suspending or withdrawing the license of a licensee, the Commissioner may prohibit the branch manager, managing ~~broker~~ principal, or loan officer from serving as a branch manager, managing ~~broker~~ principal, or loan officer for any period of time the Commissioner deems necessary."

SECTION 21. G.S. 53-243.16 reads as rewritten:

"**§ 53-243.16. Criminal history record checks.**

(a) The Department of Justice may provide a criminal record check to the Commissioner for ~~a~~ any person who has applied for or holds a mortgage banker, mortgage broker, exclusive mortgage broker, or loan officer license through the Commissioner under this Article.

(b) In addition, if a person described in subsection (a) of this section is a corporation, partnership, limited liability company, association, or trust, the Department

of Justice may provide a criminal record check to the Commissioner for any person who has control of that person, or who is the managing principal or a branch manager of that person.

(c) The Commissioner shall provide to the Department of Justice, along with the request, the fingerprints of the ~~applicant,~~ person, any additional information required by the Department of Justice, and a form signed by the ~~applicant~~ person consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The ~~applicant's~~ person's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Commissioner shall keep all information pursuant to this section privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge a fee for each ~~applicant~~ person for conducting the checks of criminal history records authorized by this section."

SECTION 22. G.S. 53-257(6) reads as rewritten:

"(6) Reverse mortgage loan or loan. – A loan for a definite or indefinite term (i) secured by a first mortgage or first deed of trust on the principal residence of the ~~mortgagor,~~ mortgagor located in North Carolina, (ii) the proceeds of which are disbursed to the mortgagor in one or more lump sums, or in equal or unequal installments, either directly by the lender or the lender's agent, and (iii) that requires no repayment until a future time, upon the earliest occurrence of one or more events specified in the reverse mortgage loan contract."

SECTION 23. G.S. 53-258 reads as rewritten:

"**§ 53-258. Authority and procedures governing reverse mortgage loans.**

(a) No person, firm, or corporation shall engage in the business of making reverse mortgage loans without first being approved as an authorized lender by the ~~Commissioner, unless the lender is the North Carolina Housing Finance Agency, or is a bank, savings institution, or credit union authorized to do business under the laws of this State or authorized to do business under the laws of the United States and chartered to do business in this State.~~Commissioner.

(b) An application for authorization to make reverse mortgage loans shall be in writing to the Commissioner and in the form prescribed by the Commissioner. The application shall contain the name and complete business address or addresses of the applicant. The application shall also include affirmation of financial solvency and all capitalization requirements that are required by the Commissioner. The application shall be accompanied by a nonrefundable fee, payable to the Commissioner, of five hundred dollars ($500.00).

(b1) Each of the following lenders shall be considered authorized to engage in the business of making reverse mortgage loans without being required to apply pursuant to subsection (b) of this section and may represent to the public that it is so authorized:

(1) The North Carolina Housing Finance Agency.
(2) A bank, savings institution, or credit union formed under the laws of this or any other state.
(3) A wholly-owned subsidiary of an entity described in subdivision (2) of this subsection.

Each lender listed in this subsection may, upon written request to the Commissioner of Banks, obtain written confirmation of its authority to engage in the business of making reverse mortgage loans. In the case of lenders listed in subdivisions (2) and (3) of this subsection, the request shall be accompanied by the fee set forth in subsection (d) of this section.

~~(c) The North Carolina Housing Finance Agency, and any bank, savings institution, or credit union that is not required to obtain authorization to make reverse mortgage loans under subsection (a) of this section, shall, prior to making any reverse mortgage loan, notify the Commissioner of its intent to make reverse mortgage loans. This notification shall be made on a form prescribed by the Commissioner and shall contain all information required by the Commissioner.~~

(d) The Commissioner shall, upon determination that ~~a lender~~ an applicant should be authorized to make reverse mortgage loans, issue notice of this authority to the lender. The authority to issue reverse mortgage loans is valid for the period of time specified by the Commissioner. A lender to whom a notice of authority is issued shall display the notice prominently in any and all offices of the lender that make reverse mortgage loans. Authorizations issued under this section are ~~nontransferable and subject to~~ nontransferable. Except for lenders described in subsection (b1) of this section, each lender to which an authorization is issued shall pay an annual renewal fee of two hundred fifty dollars ($250.00)."

SECTION 24. G.S. 54B-4(b) is amended by adding the following new subsection to read:

"(32b) "Limited Service Facility" means a staffed physical location open to the public in this State in which a State association conducts any activity of a "branch office" set forth in subdivision (7) of this subsection, but which is not considered a branch by virtue of the fact that the State association does not engage in all activities of a branch at the location. A location is a limited service facility of a State association notwithstanding that it is operated by a third party if there exists an agreement between the third party and the State association pursuant to which the third party (i) takes deposits or offers loans as an agent of the State association or in the State association's name; or (ii) is obligated to sell or otherwise transfer to the State association all or a substantial portion of the loan or deposit production of that location."

SECTION 25. G.S. 54B-22 reads as rewritten:

"**§ 54B-22. Branch ~~offices.~~ offices and limited service facilities.**

~~(a) Any State association may apply to the Commissioner of Banks for permission to establish a branch office. The application shall be in such form as may be prescribed by the Commissioner of Banks and shall be accompanied by the proper~~

~~branch application fee. Branch applications shall be approved or denied by the Commissioner of Banks within 120 days of filing.~~

~~(b) The Commissioner of Banks shall approve a branch application when all of the following criteria are met:~~

~~(1) The applicant has gross assets of at least ten million dollars ($10,000,000);~~

~~(2) The applicant has evidenced financial responsibility;~~

~~(3) The applicant has a net worth equal to or exceeding the amount required by the insurer of the applicant's withdrawable accounts;~~

~~(4) The applicant has an acceptable internal control system. Such a system would include certain basic internal control requirements essential to the protection of assets and the promotion of operational efficiency regardless of the size of the applicant. Some of the factors which require extensive internal control requirements such as the use of the controller or internal auditor and more distinctive placement responsibilities include the applicant's size, number of personnel and history of and anticipated plans for expansion.~~

~~(c) Upon receipt of a branch application, the Commissioner of Banks shall examine or cause to be examined all the relevant facts connected with the establishment of the proposed branch office. If it appears to the satisfaction of the Commissioner of Banks that the applicant has complied with all the requirements set forth in this section and the regulations for the establishment of a branch office and that the association is otherwise lawfully entitled to establish such branch office, then the administrator shall approve the branch application.~~

~~(d) Not more than 10 days following the filing of the branch application with the Commissioner of Banks, the applicant shall cause a notice to be published in a newspaper of general circulation in the area to be served by the proposed branch office. Such notice shall contain:~~

~~(1) A statement that the branch application has been filed with the Commissioner of Banks;~~

~~(2) The proposed address of the branch office, including city or town and street; and~~

~~(3) A statement that any interested or affected party may file a written statement with the Commissioner of Banks, within 30 days of the date of the publication of the notice, protesting the establishment of the proposed branch office and requesting a hearing before the Commissioner of Banks on the application.~~

~~(e) Any interested or affected party may file a written statement with the Commissioner of Banks within 30 days of the date of initial publication of the branch application notice, protesting the establishment of the proposed branch office and requesting a hearing before the Commissioner of Banks on the application. If a hearing is held on the branch application, the Commissioner of Banks shall only receive information and hear testimony from the applicant and from any interested or affected party which is relevant to the branch application and the operation of the proposed~~

~~branch office. The Commissioner of Banks shall issue his final decision on the branch application within 30 days following the hearing. Such final decision shall be in accordance with the applicable provisions of Chapter 150B of the General Statutes.~~

~~(f) If a hearing is not held on the branch application, the Commissioner of Banks shall issue his final decision within 120 days of the filing of the application. Such final decision shall be in accordance with the applicable provisions of Chapter 150B of the General Statutes.~~

~~(g) to (i) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1238, s. 3.~~

~~(j) Any party to a branch application may appeal the final decision of the to the Commission at any time after final decision, but not later than 30 days after a written copy of the final decision is served upon the party and his attorney of record by personal service or by certified mail. Failure to file such appeal within the time stated shall operate as a waiver of the right of such party to review by the Commission and by a court of competent jurisdiction in accordance with Chapter 150B of the General Statutes, relating to judicial review.~~

(a) A State association, with the prior written approval of the Commissioner of Banks, may:

(1) Establish a branch office or limited service facility; or

(2) Convert an existing limited service facility to a branch office.

The application for approval to establish or convert a branch office or limited service facility shall be in a form prescribed by the Commissioner of Banks and shall be accompanied by the application fee established by the Banking Commission by rule. Approval may be given or withheld by the Commissioner of Banks. In determining whether to give or withhold approval, the Commissioner of Banks shall take into account factors including the financial history and condition of the applicant association, the adequacy of its capital structure, its future earnings prospects, and the general character of its management.

The Commissioner of Banks shall not give approval pursuant to this subsection unless the Commissioner finds that:

(1) The establishment or conversion of the branch office or limited service facility will meet the needs and promote the convenience of the community to be served thereby; and

(2) The probable volume of business and reasonable public demand in the community are sufficient to assure and maintain the solvency of the branch office or limited service facility and of the existing depository instructions in the community.

(b) A branch or limited service facility of a State association shall be operated under the control and direction of the board of directors and executive officers of the State association and under the name of the State association as set forth in its Certificate of Incorporation filed with the Office of the Secretary of State, except that the Commissioner of Banks may permit the operation of a branch office or limited service facility under an assumed name under the conditions and terms imposed by the Commissioner if the Commissioner finds that the name will not result in confusion among customers of the State association or among the general public. The board of

directors of the State association shall elect officers required to conduct the business of any branch or limited service facility.

The Commissioner of Banks shall not authorize the establishment or conversion of a branch office or limited service facility until the Commissioner is satisfied that the applicant State association has sufficient capital to maintain a minimum capital to asset ratio as the Commissioner of Banks may require. In determining the ratio, the Commissioner of Banks shall give due consideration to (i) the amount of capital required to support the association's projected growth, (ii) the association's earnings history and projected earnings, (iii) the quality of the association's assets, (iv) the amount of capital then invested by the State association in fixed assets, and (v) the business experience and reputation of the management.

(c) Subject to rules adopted by the State Banking Commission with regard to their use, maintenance, and supervision, any State association may establish off the premises of any principal office, branch office, or limited service facility a customer-bank communications terminal, point-of-sale terminal, automated teller machine, automated banking facility, or other direct or remote information-processing device or machine, whether manned or unmanned, through or by means of which information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise, to or from an association or other terminal. The establishment and use of the device or machine shall not be deemed a branch or limited service facility, and the net worth requirements and standards for approval of a branch, all as set forth in this section, shall not be applicable to the establishment of any off-premises terminal device or machine."

SECTION 26. G.S. 54C-4(18) reads as rewritten:

"(18) ~~Loan production office. – An office of a savings bank other than the principal or branch offices whose activities are limited to the generation of loans.~~

Limited service facility. – A staffed physical location open to the public in this State in which a State savings bank conducts any activity of a "branch office" set forth in subdivision (5) of this subsection, but which is not considered a branch by virtue of the fact that the State savings bank does not engage in all activities of a branch at the location. A location is a limited service facility of a State savings bank notwithstanding that it is operated by a third party if there exists an agreement between the third party and the State savings bank pursuant to which the third party (i) takes deposits or offers loans as an agent of the State savings bank or in the State savings bank's name; or (ii) is obligated to sell or otherwise transfer to the State savings bank all or a substantial portion of the loan or deposit production of that location."

SECTION 27. G.S. 54C-23 reads as rewritten:

"**§ 54C-23. Branch ~~offices.~~offices and limited service facilities.**

~~(a) A State savings bank may apply to the Commissioner of Banks for permission to establish a branch office. The application shall be in the form prescribed by the Commissioner of Banks and shall be accompanied by the proper branch~~

~~application fee. The Commissioner of Banks shall approve or deny branch applications within 120 days of filing.~~

~~(b) The Commissioner of Banks shall approve a branch application when all of the following criteria are met:~~

~~(1) The applicant has gross assets of at least ten million dollars ($10,000,000).~~

~~(2) The applicant has evidenced financial responsibility.~~

~~(3) The applicant has a net worth equal to or exceeding the amount required by the insurer of deposit accounts.~~

~~(4) The applicant has an acceptable internal control system that includes certain basic internal control requirements essential to the protection of assets and the promotion of operational efficiency regardless of the size of the applicant.~~

~~(c) Upon receipt of a branch application, the Commissioner of Banks shall examine or cause to be examined all the relevant facts connected with the establishment of the proposed branch office. If it appears to the satisfaction of the Commissioner of Banks that the applicant has complied with all the requirements set forth in this section and the regulations for the establishment of a branch office and that the savings bank is otherwise lawfully entitled to establish the branch office, then the Commissioner of Banks shall approve the branch application.~~

~~(d) Not more than 10 days following the filing of the branch application with the Commissioner of Banks, the applicant shall cause a notice to be published in a newspaper of general circulation in the area to be served by the proposed branch office. The notice shall contain:~~

~~(1) A statement that the branch application has been filed with the Commissioner of Banks;~~

~~(2) The proposed address of the branch office, including city or town and street; and~~

~~(3) A statement that any interested or affected party may file a written statement with the Commissioner of Banks, within 30 days of the date of the publication of the notice, protesting the establishment of the proposed branch office and requesting a hearing before the Commissioner of Banks on the application.~~

~~(e) Any interested or affected party may file a written statement with the Commissioner of Banks within 30 days of the date of initial publication of the branch application notice, protesting the establishment of the proposed branch office and requesting a hearing before the Commissioner of Banks on the application. If a hearing is held on the branch application, the Commissioner of Banks shall receive information and hear testimony only from the applicant and from any interested or affected party that is relevant to the branch application and the operation of the proposed branch office. The Commissioner of Banks shall issue the final decision on the branch application within 30 days following the hearing. The final decision shall be in accordance with Chapter 150B of the General Statutes.~~

~~(f) If a hearing is not held on the branch application, the Commissioner of Banks shall issue the final decision within 120 days of the filing of the application. The final decision shall be in accordance with Chapter 150B of the General Statutes.~~

~~(g) A party to a branch application may appeal the final decision of the Commissioner of Banks to the Commission at any time after the final decision, but not later than 30 days after a written copy of the final decision is served upon the party and the party's attorney of record by personal service or by certified mail. Failure to file an appeal within the time stated shall operate as a waiver of the right of the party to review by the Commission and by a court of competent jurisdiction in accordance with Chapter 150B of the General Statutes, relating to judicial review.~~

(a) A State savings bank, with the prior written approval of the Commissioner of Banks, may:

(1) Establish a branch office or limited service facility; or

(2) Convert an existing limited service facility to a branch office.

The application for approval to establish or convert a branch office or limited service facility shall be in a form prescribed by the Commissioner of Banks and shall be accompanied by the application fee established by the Banking Commission by rule. Approval may be given or withheld by the Commissioner of Banks. In determining whether to give or withhold approval, the Commissioner of Banks shall take into account factors including the financial history and condition of the applicant State savings bank, the adequacy of its capital structure, its future earnings prospects, and the general character of its management.

The Commissioner of Banks shall not give approval pursuant to this subsection unless the Commissioner finds that:

(1) The establishment or conversion of the branch office or limited service facility will meet the needs and promote the convenience of the community to be served thereby; and

(2) The probable volume of business and reasonable public demand in the community are sufficient to assure and maintain the solvency of the branch office or limited service facility and of the existing depository instructions in the community.

(b) A branch or limited service facility of a State savings bank shall be operated under the control and direction of the board of directors and executive officers of the State savings bank and under the name of the State savings bank as set forth in its Certificate of Incorporation filed with the Office of the Secretary of State, except that the Commissioner of Banks may permit the operation of a branch office or limited service facility under an assumed name under the conditions and terms imposed by the Commissioner if the Commissioner finds that the name will not result in confusion among customers of the State savings bank or among the general public. The board of directors of the State savings bank shall elect officers required to conduct the business of any branch or limited service facility.

The Commissioner of Banks shall not authorize the establishment or conversion of a branch office or limited service facility until the Commissioner is satisfied that the applicant State savings bank has sufficient capital to maintain a minimum capital to

asset ratio as the Commissioner of Banks may require. In determining the ratio, the Commissioner of Banks shall give due consideration to (i) the amount of capital required to support the State savings bank's projected growth, (ii) the State savings bank's earnings history and projected earnings, (iii) the quality of the savings bank's assets, (iv) the amount of capital then invested by the State association in fixed assets, and (v) the business experience and reputation of the management.

(c) Subject to rules adopted by the State Banking Commission with regard to their use, maintenance, and supervision, any State savings bank may establish off the premises of any principal office, branch office, or limited service facility a customer-bank communications terminal, point-of-sale terminal, automated teller machine, automated banking facility, or other direct or remote information-processing device or machine, whether manned or unmanned, through or by means of which information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise, to or from a savings bank or other terminal. The establishment and use of the device or machine shall not be deemed a branch or limited service facility, and the net worth requirements and standards for approval of a branch, all as set forth in this section, shall not be applicable to the establishment of any off-premises terminal device or machine."

SECTION 28. G. S. 54C-27 is repealed.

SECTION 29. G. S. 150B-21.1 is amended by adding a new subsection to read:

"(a11) Notwithstanding the provisions of subsection (a) of this section, the Commissioner of Banks may, in accordance with the provisions of Article 8 of Chapter 53 of the General Statutes, adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following reasons:

(1) To ensure the safe and sound management of the financial institutions under the Commissioner's supervision pursuant to Chapters 53, 54B, and 54C of the General Statutes.

(2) To implement any provision of State or federal law for which the Commissioner of Banks or the State Banking Commission has been authorized to adopt rules.

(3) To preserve the operational integrity of the system of regulated financial institutions serving the citizens of this State.

(4) To prevent catastrophic loss to the interests of depositors, creditors, stockholders, or the public in their relations with the system of regulated financial institutions.

When the Commissioner of Banks adopts a temporary rule pursuant to this subsection, the Commissioner shall submit the reference to this subsection as the agency's statement of need to the Codifier of Rules."

SECTION 30. The Legislative Research Commission shall undertake a comprehensive study of those laws, including Chapters 53, 54B, 54C, and 24 of the General Statutes, which affect the establishment and operation of banks in North Carolina and shall make recommendations by not later than December 31, 2003, to the

Commissioner as to which laws (i) are obsolete, unnecessary or duplicative, (ii) are unnecessarily inconsistent in the treatment of banks, savings and loan associations, and savings banks, and (iii) unnecessarily restrict, impede, or prohibit activities of banks, savings and loan associations, and savings banks or the ability of the Commissioner of Banks to regulate banks and savings institutions in an effective, efficient, and equitable manner.

The Legislative Research Commission shall also recommend proposed legislation to correct any deficiencies in the laws governing the banks.

In preparing its recommendations, the Commission shall actively solicit and consider information received from representatives of banks, savings and loan associations, savings banks, the State Banking Commission, the Commissioner of Banks and the Commissioner's staff, and the general public.

SECTION 31. This act becomes effective October 1, 2003, and applies to acts occurring and transactions or agreements entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 777

Short Title:	Amend Dealer Licensing Law.	(Public)
Sponsors:	Senators Foxx, Hoyle, Sloan; Apodaca, Berger, Carpenter, Forrester, Garwood, Kerr, Metcalf, Moore, Rucho, and Shaw.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW WITH REGARD TO THE MANUFACTURE, SALE, AND DISTRIBUTION OF TRAILERS AND SEMITRAILERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-286(11) reads as rewritten:

"(11) Motor vehicle dealer or dealer. –

a. A person who does any of the following:

1. For commission, money, or other thing of value, buys, sells, or exchanges, whether outright or on conditional sale, bailment lease, chattel mortgage, or otherwise, five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.
2. On behalf of another and for commission, money, or other thing of value, arranges, offers, attempts to solicit, or attempts to negotiate the sale, purchase, or exchange of an interest in five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.
3. Engages, wholly or in part, in the business of selling new motor vehicles or new or used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by that person, and sells five or more motor vehicles within any 12 consecutive months.
4. Offers to sell, displays, or permits the display for sale for any form of compensation five or more motor vehicles within any 12 consecutive months.

5. Primarily engages in the leasing or renting of motor vehicles to others and sells or offers to sell those vehicles at retail.

b. The term "motor vehicle dealer" or "dealer" does not include any of the following:

1. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.
2. Public officers while performing their official duties.
3. Persons disposing of motor vehicles acquired for their own use or the use of a family member, and actually so used, when the vehicles have been acquired and used in good faith and not for the purpose of avoiding the provisions of this Article.
4. Persons who sell motor vehicles as an incident to their principal business but who are not engaged primarily in the selling of motor vehicles. This category includes financial institutions who sell repossessed motor vehicles and insurance companies who sell motor vehicles to which they have taken title as an incident of payments made under policies of insurance, and auctioneers who sell motor vehicles for the owners or the heirs of the owners of those vehicles as part of an auction of other personal or real property or for the purpose of settling an estate or closing a business or who sell motor vehicles on behalf of a governmental entity, and who do not maintain a used car lot or building with one or more employed motor vehicle sales representatives.
5. Persons manufacturing, distributing or selling trailers and semitrailers weighing not more than ~~750 pounds and carrying not more than a 1,500 pound load.~~ 2,500 pounds unloaded weight.
6. A licensed real estate broker or salesman who sells a mobile home for the owner as an incident to the sale of land upon which the mobile home is located.
7. An employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business.
8. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of motor vehicles owned by others.
9. Any person dealing solely in the sale or lease of vehicles designed exclusively for off-road use.

10. Any real property owner who leases any interest in property for use by a dealer.
11. Any person acquiring any interest in a motor vehicle for a family member."

SECTION 2. G.S. 20-288(d) reads as rewritten:

"(d) To obtain a license as a wholesaler, an applicant who intends to sell or distribute self-propelled vehicles must have an established office in this State, and an applicant who intends to sell or distribute only trailers or semitrailers of ~~less~~ more than 2500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

To obtain a license as a motor vehicle dealer, an applicant who intends to deal in self-propelled vehicles must have an established salesroom in this State, and an applicant who intends to deal in only trailers or semitrailers of ~~less~~ more than 2500 pounds unloaded weight must have a place of business in this State where the records required under this Article are kept.

An applicant for a license as a manufacturer, a factory branch, a distributor, a distributor branch, a wholesaler, or a motor vehicle dealer must have a separate license for each established office, established salesroom, or other place of business in this State. An application for any of these licenses shall include a list of the applicant's places of business in this State. An applicant for a license as a manufacturer, a factory branch, a distributor, a distributor branch, a wholesaler, or a motor vehicle dealer may elect, at the time of application or renewal, to consolidate the renewal of these licenses for each established office, established showroom, or other place of business in this State held in the name of one person or entity."

SECTION 3. This act becomes effective July 1, 2003, and applies to licenses issued or renewed on or after that date.

SENATE BILL 777:
Amend Dealer Licensing Laws

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senators Foxx, Hoyle, and Sloan
Date:	April 15, 2003		
Version:	First Edition	**Summary by:**	Wendy Graf Ray Committee Counsel

SUMMARY: ***Senate Bill 777 would amend the law pertaining to the manufacture, sale, and distribution of trailers and semitrailers.***

CURRENT LAW: Article 12 of Chapter 20 of the General Statutes requires motor vehicle dealers to be licensed to engage in business in North Carolina. The definition of motor vehicle dealer specifically excludes persons manufacturing, distributing or selling trailers and semitrailers weighing not more than 750 pounds and carrying not more than a 1,500 pound load, thereby exempting those persons from regulation under Article 12.

Under the current law, persons manufacturing, distributing or selling trailers and semitrailers that are not specifically excluded from the definition of motor vehicle dealer are subject to regulation under Article 12 and must be licensed. G.S. 20-288(d) requires applicants for a license to maintain an established office or showroom in North Carolina. However, license applicants who intend only to deal in or sell or distribute trailers or semitrailers weighing less than 2,500 pounds unloaded are required to have "a place of business" in North Carolina where records are to be kept.

BILL ANALYSIS: Senate Bill 777 would amend the definition of motor vehicle dealer to exclude persons manufacturing, distributing or selling trailers and semitrailers weighing not more than 2,500 pounds unloaded, rather than 750 pounds with a maximum 1,500 pound load.

The bill would also amend G.S. 20-288(d) to require an applicant to have a place of business in North Carolina only if the applicant deals in or sells or distributes trailers or semitrailers weighing more than 2,500 pounds, instead of less than 2,500 pounds.

EFFECTIVE DATE: The act would be effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 777

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S777-ASU-2 [v.1]

Date _____ ,2003

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Senator Foxx

moves to amend the bill on page 3, lines 20-24,
by deleting all of the underlined language.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 661

Short Title:	Health Care Information Privacy.	(Public)
Sponsors:	Senators Reeves; Clodfelter, Dalton, Garrou, Gulley, Hagan, Kinnaird, Lucas, Malone, Metcalf, and Rand.	
Referred to:	Commerce.	

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT HEALTH INFORMATION PRIVACY BY PROHIBITING USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR PURPOSES OF MARKETING WITHOUT WRITTEN AUTHORIZATION OF THE INDIVIDUAL, AND BY LIMITING THE USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION WITHOUT INDIVIDUAL AUTHORIZATION FOR CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding the following new Chapter to read:

"**Chapter 132A.**

"**Privacy of Health Information.**

"Article 1.

"Use or Disclosure of Protected Health Information.

"**§ 132A-1. Purpose.**

The purpose of this Article is to provide greater patient privacy protections regarding the use or disclosure of protected health information for marketing purposes than are provided under the Health Insurance Portability and Accountability Act and Privacy Standards, and regulations adopted thereunder.

"**§ 132A-2. Definitions.**

(a) Unless otherwise defined in this Article, each term used in this Article has the meaning and application assigned by the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) As used in this Article:

(1) 'Health Insurance Portability and Accountability Act and Privacy Standards' means the privacy requirements of the Administrative Simplification subtitle of the Health Insurance Portability Act of 1996

(Pub. L. 104-191) and the final rules adopted December 28, 2000, as modified August 14, 2002, and any subsequent amendments.

(2) 'Marketing' means to make a communication about a product or service to encourage recipients of the communication to purchase or use the product or service, but does not include communications made as part of the treatment of a patient for the purpose of furthering treatment unless the covered entity receives direct or indirect remuneration from a third party for making the communication.

"**§ 132A-3. Protection of private health information.**

(a) Except in accordance with subsection (b) of this section, a covered entity shall not:

(1) Disclose protected health information to any entity for marketing the products or services of the entity; or

(2) Use protected health information in its possession to provide marketing services to any entity.

(b) A covered entity may provide marketing services to a pharmaceutical company if the covered entity:

(1) Provides clear and conspicuous notice to the individual involved concerning its disclosure practices for all protected health information collected or created with regard to the individual; and

(2) Obtains the consent of the individual involved to use the information and that consent is manifested by an affirmative act in a written communication which only references and applies to the specific marketing purpose for which the information is to be used.

(c) Applicability. – This Article does not affect the validity of another law of this State that provides greater confidentiality for information made confidential by this Article.

"**§ 132A-4. Use or disclosure of protected health information for public health activities and purposes to persons subject to the jurisdiction of the Food and Drug Administration.**

A covered entity shall not use or disclose protected health information without the written consent of the individual who is the subject of the protected health information to persons subject to the jurisdiction of the Food and Drug Administration except for the following public health activities or purposes:

(1) To report adverse events (or similar reports with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations if the disclosure is made to the person required or directed to report the information to the Food and Drug Administration;

(2) To track products if the disclosure is made to a person required or directed by the Food and Drug Administration to track the product;

(3) To enable product recalls, repairs, or replacement (including locating and notifying individuals who have received products of product recalls, withdrawals, or other problems); or

(4) To conduct post-marketing surveillance to comply with requirements or at the direction of the Food and Drug Administration.

"**§ 132A-5. Enforcement.**

(a) Injunctive Relief. – The Attorney General of this State may institute an action for injunctive relief to restrain a violation of this Article.

(b) Civil Penalties. – In addition to the injunctive relief provided by this section, the Attorney General may institute an action for civil penalties against a covered entity for a violation of this Article. A civil penalty assessed under this section may not exceed three thousand dollars ($3,000) for each violation. If the court in which an action under this subsection is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed two hundred fifty thousand dollars ($250,000).

(c) Disciplinary Action. – In addition to the penalties prescribed under this section, a violation of this Article by an individual or facility that is licensed by an agency of this State is subject to investigation and disciplinary proceedings, including probation or suspension by the licensing agency. If the licensing agency finds evidence that the violations of this Article constitute a pattern or practice, the licensing agency may revoke the individual's or facility's license.

(d) Availability of Other Remedies. – This Article does not affect any right of a person under other law to bring a cause of action or otherwise seek relief with respect to conduct that is a violation of this Article."

SECTION 2. This act becomes effective January 1, 2004.

SENATE BILL 661:
Health Care Information Privacy

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Reeves
Date:	April 12, 2003	**Summary by:**	Kory J. Goldsmith
Version:	1st Edition		Committee Counsel

SUMMARY: ***SB661 more strictly regulates the "marketing" of protected health information than what will be allowed under federal law. The Health Insurance Portability and Accountability Act (HIPAA) is the federal law that regulates the marketing of private health information (PHI).***

BILL ANALYSIS: Like HIPAA, SB661 defines marketing as a communication about a product or service to encourage recipients to purchase or use the product or service. Also like HIPAA, marketing does not include communications made as part of the treatment of a patient. **Unlike** HIPAA, if the covered entity receives direct or indirect remuneration from a third party for making the communication, then even communications made as part of the treatment of a patient constitute marketing.

A covered entity is prohibited from:

- disclosing PHI to another entity for the purpose of marketing the products or services of the other entity; or
- using PHI in its possession to provide marketing services to another entity.

A covered entity may provide marketing services to a pharmaceutical company if the covered entity:

- provides clear and conspicuous notice regarding its disclosure practices; and
- obtains prior written consent.

A covered entity may provide PHI to an entity under the jurisdiction of the Food and Drug Administration (pharmaceutical researchers) for the following purposes:

- to report adverse effects, product defects, or biological product deviations
- to tract products provided there is disclosure to person appointed or required to do the tracking by the FDA
- for product recalls, repairs, and replacement
- to conduct post-marketing surveillance to comply with FDA requirements.

A violation of the law could result in injunctive relief and a civil penalty not to exceed $3,000 for each violation. Where a court finds a pattern or practice of violations, it may impose a penalty up to $250,000. An individual may also be subject to investigation and disciplinary proceedings, and license suspension or revocation by the appropriate licensing agency.

CURRENT (FEDERAL) LAW: The general rule under HIPAA is that covered entities must obtain an individual's authorization before using or disclosing protected health information ("PHI") for marketing purposes. "Marketing" is a communication about a product or service the purpose of which is to encourage recipients of the communication to purchase or use the product or service. Activities that constitute treatment, payment, and health care operations are not marketing. There are three exceptions to the definition of marketing:

- Communications made by a covered entity for the purpose of describing its network, the scope of services it provides, and the services for which it pays.

- Communications tailored by the provider to the circumstances of a particular individual for treatment purposes or furthering the individual's care. Includes activities such as referrals, prescriptions, recommendations, and other communications that address how a product or service may relate to the individuals health.

- Communications made by the provider or health plan to an individual in the course of managing the treatment of that individual or for recommending alternative treatments, therapies, providers, or settings of care. Permits covered entities to discuss products or services in the course of managing an individual's care or providing treatment.

Even if a situation falls within the definition of marketing, there are three exceptions to the requirement that a covered entity first obtain the individual's authorization before using the PHI for marketing purposes. These are:

- Face-to-face communications with the individual, for example, a physician tells her patient about a product or service during the office visit.

- Communications involving products or services of "nominal value". Nominal value is not defined in the rule, but is thought to mean something like a coupon, rebate, or toothbrush.

- Communications involving health-related products or services of the covered entity or of a third party, provided that the communication:

    - identifies the covered entity as the "marketer"

    - reveals whether the covered entity receives any remuneration from a third-party for making the communication;

    - tells the individual how to opt-out of future communications; and

    - if PHI was used to target an individual about a particular product or service, discloses why the individual was chosen and how the product or service could benefit him/her.

        - PLUS - The covered entity determines, prior to making the targeted communication, that the product or service may be beneficial to the health of the type or class of individual targeted.

The act is effective when it becomes law.

S661-SMRC-001

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 661

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S661-ARM-13 [v.2]

Date 4/15/03 ,2003

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Senator Rand

moves to amend the bill on page 2, line 5 by deleting the word "made" and inserting the following:
made; (i); and on page 2, line 7, by inserting the following after the word "treatment":

"or (ii) communications by a health plan to its members including communications about the plan of benefits and replacements or enhancements to the benefit plan, the network of providers, and value added services available to its members,".

SIGNED Tony Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 861*

Short Title:	Adopt International Building Code.	(Public)
Sponsors:	Senators Clodfelter and Hoyle.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE INTERNATIONAL BUILDING CODE AS THE STATE BUILDING CODE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-138(a) reads as rewritten:

"(a) ~~Preparation and~~ Adoption. ~~The Building Code Council may prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. Before the adoption of the Code, or any part of the Code, the Council shall hold at least one public hearing. A notice of the public hearing shall be published in the North Carolina Register at least 15 days before the date of the hearing.~~ The North Carolina State Building Code shall be adopted by reference with limited technical amendments from the most current edition of the International Code Council's International Building Code. Notwithstanding G.S. 150B-2(8a)h., the North Carolina State Building Code as adopted ~~by the Building Code Council~~ is a rule within the meaning of G.S. 150B-2(8a) and shall be adopted in accordance with the procedural requirements of Article 2A of Chapter 150B of the General Statutes.

The Building Code Council shall request the Office of State Budget and Management to prepare a fiscal note for a proposed Code change that has a substantial economic impact, as defined in G.S. 150B-21.4(b1), or that increases the cost of residential housing by eighty dollars ($80.00) or more per housing unit. The change can become effective only in accordance with G.S. 143-138(d). Neither the Department of Insurance nor the Council shall be required to expend any monies to pay for the preparation of any fiscal note under this section by any person outside of the Department or Council unless the Department or Council contracts with a third-party vendor to prepare the fiscal note."

SECTION 2. G.S. 143-138(b) reads as rewritten:

"(b) Contents of the Code. – ~~The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as~~

~~to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.~~

~~In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.~~ The North Carolina State Building Code shall contain the following codes adopted by reference from the International Code Council:

(1) The International Building Code.
(2) The International Plumbing Code.
(3) The International Mechanical Code.
(4) The International Fuel Gas Code.
(5) The International Energy Conservation Code.
(6) The International Fire Prevention Code.
(7) The International Electric Code.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building rules applicable to farm buildings located outside the building-rules jurisdiction of any municipality.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or

change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,

(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and

(3) Any rules relating to sanitation adopted by the Commission for Health Services which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements."

SECTION 3. G.S. 143-138(c) reads as rewritten:

"(c) Standards to Be Followed in Adopting the Code. – All regulations contained in the North Carolina State Building Code shall have a reasonable and substantial connection with the public health, safety, morals, or general welfare, and their provisions shall be construed reasonably to those ends. Requirements of the Code shall conform to good engineering practice. The Council ~~may use as guidance, but is not required to adopt,~~ shall adopt the requirements of the International Building Code of the International Code ~~Council, the Standard Building Code of the Southern Building Code Congress International, Inc., the Uniform Building Code of the International Conference of Building Officials, the National Building Code of the Building Officials and Code Administrators, Inc., the National Electric Code, the Life Safety Code, the National Fuel Gas Code, the Fire Prevention Code of the National Fire Protection Association, the~~

~~Safety Code for Elevators and Escalators, and the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers, and standards promulgated by the American National Standards Institute, Standards Underwriters' Laboratories, Inc., and similar national or international agencies engaged in research concerning strength of materials, safe design, and other factors bearing upon health and safety.~~ Council."

SECTION 4. G.S. 143-138(d) reads as rewritten:

"(d) Amendments of the Code. – The Building Code Council ~~may~~ shall not revise and amend the North Carolina State Building ~~Code, either on its own motion or upon application from any citizen, State agency, or political subdivision of the State.~~ Code other than to conform administrative procedures in Chapter 1 of the International Building Code to North Carolina regulations and to conform accessibility provisions in Chapter 11 of the International Building Code to the North Carolina State Building Code, Accessibility Code, 2002 Edition. In adopting any administrative amendment, the Council shall comply with the same procedural requirements and the same standards set forth above for adoption of the Code.

~~Handbooks providing explanatory material on Code provisions shall be provided no later than January 1, 2000, and shall be updated with each revision of the Code or, in the discretion of the Council, more frequently. The Department may charge a reasonable fee for the handbooks.~~"

SECTION 5. G.S. 143-138(g) reads as rewritten:

"(g) Publication and Distribution of Code. – The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and ~~each amendment~~ the administrative section thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	1
Attorney General (Library)	1
Commissioner of Agriculture	1
Commissioner of Labor	1
Commissioner of Insurance	1
Department of Environment and Natural Resources	1
Department of Health and Human Services	1
Department of Juvenile Justice and Delinquency Prevention	1
Board of Transportation	1

Utilities Commission 1
Department of Administration 1
Clerk of the Supreme Court 1
Clerk of the Court of Appeals 1
Clerk of the Superior Court ..... 1 each
Department of Cultural Resources [State Library] 5
Supreme Court Library 2
Legislative Library 1
Office of Administrative Hearings 1
Rules Review Commission 1

Schools

All state-supported colleges and universities in the State of North Carolina ..... *1 each

Local Officials

Clerks of the Superior Courts ..... 1 each
Chief Building Inspector of each incorporated municipality or county 1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public."

SECTION 6. G.S. 143-139 is amended by adding a new subsection to read:

"(b2) Alternative Building Code Interpretations. – Interpretations of the North Carolina State Building Code may also be obtained from the model code agency from which the North Carolina State Building Code was adopted. Interpretations from the model code agency shall have the same legal force and effect as interpretations from the Department of Insurance."

SECTION 7. G.S. 143-141 is amended by adding a new subsection to read:

"(b1) Resolving Interpretation Disputes. – When a dispute arises regarding the interpretation of a provision of the North Carolina State Building Code between the Department of Insurance and the model code agency from which the North Carolina State Building Code was adopted, the Building Code Council may hear an appeal and rule on it pursuant to subsection (b) of this section."

SECTION 8. This act becomes effective October 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 913*

Short Title:	Streamline Building Code.	(Public)
Sponsors:	Senators Clodfelter, Hoyle, and Queen.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO STREAMLINE BUILDING CODE ADOPTION FOR GENERAL AND RESIDENTIAL CONSTRUCTION AND THE REVIEW PROCESS FOR STATE CAPITAL IMPROVEMENT PROJECTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 143 of the General Statutes is amended by:

(1) Designating G.S. 143-136 through G.S. 143-138.1 as:
"Part 1. NonResidential Building Code Council and Building Code." and

(2) Designating G.S. 143-139 through G.S. 143-143.4 as:
"Part 3. Enforcement; Hearing Procedures; Exemptions."

SECTION 2. G.S. 143-136 reads as rewritten:

"**§ 143-136. Building Code Council created; membership.**

(a) Creation; Membership; Terms. – There is hereby created a Building Code Council, which shall be composed of ~~17~~ 10 members appointed by the Governor, consisting of two registered architects, one licensed general contractor, ~~one licensed general contractor specializing in residential construction, one licensed general contractor specializing in coastal residential construction,~~ one registered engineer practicing structural engineering, one registered engineer practicing mechanical engineering, one registered engineer practicing electrical engineering, one licensed plumbing and heating contractor, one municipal or county building inspector, ~~one licensed liquid petroleum gas dealer/contractor involved in the design of natural and liquid petroleum gas systems who has expertise and experience in natural and liquid petroleum gas piping, venting and appliances,~~ a representative of the public who is not a member of the building construction industry, ~~a licensed electrical contractor, a registered engineer on the engineering staff of a State agency charged with approval of plans of State-owned buildings, a municipal elected official or city manager, a county commissioner or county manager,~~ and an active member of the North Carolina fire service with expertise in fire safety. In selecting the municipal and county members,

preference should be given to members who qualify as either a registered architect, registered engineer, or licensed general contractor. Of the members initially appointed by the Governor, three shall serve for terms of two years each, three shall serve for terms of four years each, and three shall serve for terms of six years each. Thereafter, all appointments shall be for terms of six years. The Governor may remove appointive members at any time. Neither the architect nor any of the above named engineers shall be engaged in the manufacture, promotion or sale of any building material, and any member who shall, during his term, cease to meet the qualifications for original appointment (through ceasing to be a practicing member of the profession indicated or otherwise) shall thereby forfeit his membership on the Council. In making new appointments or filling vacancies, the Governor shall ensure that minorities and women are represented on the Council.

The Governor may make appointments to fill the unexpired portions of any terms vacated by reason of death, resignation, or removal from office. In making such appointment, he shall preserve the composition of the Council required above.

(b) Compensation. – Members of the Building Code Council other than any who are employees of the State shall receive seven dollars ($7.00) per day, including necessary time spent in traveling to and from their place of residence within the State to any place of meeting or while traveling on official business of the Council. In addition, all members shall receive mileage and subsistence according to State practice while going to and from any place of meeting, or when on official business of the Council."

SECTION 3. G.S. 143-138(a) reads as rewritten:

"(a) Preparation and Adoption. – The Building Code Council may prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building ~~Code.~~ Code for nonresidential buildings, including multifamily residential buildings but not including one-family or two-family residential buildings. Before the adoption of the Code, or any part of the Code, the Council shall hold at least one public hearing. A notice of the public hearing shall be published in the North Carolina Register at least 15 days before the date of the hearing. Notwithstanding G.S. 150B-2(8a)h., the North Carolina State Building Code as adopted by the Building Code Council is a rule within the meaning of G.S. 150B-2(8a) and shall be adopted in accordance with the procedural requirements of Article 2A of Chapter 150B of the General Statutes.

The Council shall request the Office of State Budget and Management to prepare a fiscal note for a proposed Code change that has a substantial economic impact, as defined in G.S. 150B-21.4(b1), or that increases the cost of residential housing by eighty dollars ($80.00) or more per housing unit. The change can become effective only in accordance with G.S. 143-138(d). Neither the Department of Insurance nor the Council shall be required to expend any monies to pay for the preparation of any fiscal note under this section by any person outside of the Department or Council unless the Department or Council contracts with a third-party vendor to prepare the fiscal note."

SECTION 4. G.S. 143-138(b) reads as rewritten:

"(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as

to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions regulating every type of building or structure, except for one-family or two-family residential construction, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building rules applicable to farm buildings located outside the building-rules jurisdiction of any municipality.

~~Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single family residence or farm building unless the work involves: the addition, repair, or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing.~~

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any rules governing boilers adopted by the Board of Boiler and Pressure Vessels Rules,
(2) Any rules relating to the safe operation of elevators adopted by the Commissioner of Labor, and
(3) Any rules relating to sanitation adopted by the Commission for Health Services which the Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No rule issued by any agency other than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

In addition, the Code may contain rules concerning minimum efficiency requirements for replacement water heaters, which shall consider reasonable availability from manufacturers to meet installation space requirements."

SECTION 5. G.S. 143-138 is amended by adding a new subsection to read:

"(i1) Notwithstanding any references to residential buildings or occupancies in subsection (i) of this section, this section does not apply to one-family and two-family residential buildings."

SECTION 6. Article 9 of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 2. Residential Building Code Council and Building Code.

"**§ 143-138.10. Residential Building Code Council created; membership.**

(a) Creation; Membership; Terms. – There is hereby created a Residential Building Code Council, which shall be composed of seven members appointed by the Governor, consisting of one registered electrical contractor, two licensed general contractors specializing in residential construction, one licensed general contractor specializing in coastal residential construction, one registered engineer practicing structural engineering, one municipal or county building inspector, and one plumbing, heating, or fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes. In selecting the municipal and county members, preference should be given to members who qualify as a registered architect, a registered engineer, or licensed general contractor. Of the members initially appointed by the Governor, three shall serve for terms of two years each, two shall serve for terms of four years each, and two shall serve for terms of six years each. Thereafter, all appointments shall be for

terms of six years. The Governor may remove appointive members at any time. Neither the architect nor any of the above named engineers shall be engaged in the manufacture, promotion, or sale of any building material, and any member who shall, during that member's term, cease to meet the qualifications for original appointment, through ceasing to be a practicing member of the profession indicated or otherwise, shall thereby forfeit that member's membership on the Council.

The Governor may make appointments to fill the unexpired portions of any terms vacated by reason of death, resignation, or removal from office. In making the appointment, the Governor shall preserve the composition of the Council required in this subsection.

(b) Compensation. – Members of the Residential Building Code Council, other than any who are employees of the State, shall receive seven dollars ($7.00) per day, including necessary time spent in traveling to and from their place of residence within the State to any place of meeting or while traveling on official business of the Council. In addition, all members shall receive mileage and subsistence according to State practice while going to and from any place of meeting or when on official business of the Council.

"**§ 143-138.11. Organization of Residential Building Code Council; rules; meetings; staff; fiscal affairs.**

(a) First Meeting; Organization; Rules. – Within 30 days after its appointment, the Residential Building Code Council shall meet on call of the Commissioner of Insurance. The Council shall elect from its appointive members a chair and any other officers it may choose for terms designated in its rules. The Council shall adopt rules not inconsistent herewith as it may deem necessary for the proper discharge of its duties. The chair may appoint members to any committees the work of the Council requires. In addition, the chair shall establish and appoint ad hoc code revision committees to consider and prepare revisions and amendments to the Code volumes. Each ad hoc committee shall consist of members of the Council, licensed contractors, design professionals most affected by the Code volume for which the ad hoc committee is responsible, and members of the public. The subcommittees shall meet upon the call of their respective chairs and shall report their recommendations to the Council.

(b) Meetings. – The Council shall meet regularly, at least once every six months, at places and dates to be determined by the Council. Special meetings may be called by the chair on the chair's own initiative and must be called by the chair at the request of two or more members of the Council. All members shall be notified by the chair in writing of the time and place of regular and special meetings at least seven days in advance of the meeting. Seven members shall constitute a quorum. All meetings shall be open to the public.

(c) Staff. – Personnel of the Division of Engineering of the Department of Insurance shall serve as a staff for the Council. The staff shall have the following duties:

(1) Keeping an accurate and complete record of all meetings, hearings, correspondence, laboratory studies, and technical work performed by or for the Council and making these records available for public inspection at all reasonable times.

(2) Handling correspondence for the Council.

(d) Fiscal Affairs of the Council. – All funds for the operations of the Council and its staff shall be appropriated to the Department of Insurance for the use of the Council. All funds shall be held in a separate or special account on the books of the Department of Insurance, with a separate financial designation or code number to be assigned by the Department of Administration or its agent. Expenditures for staff salaries and operating expenses shall be made in the same manner as the expenditure of any other Department of Insurance funds. The Department of Insurance may hire any additional personnel as may be necessary to handle the work of the Residential Building Code Council, within the limits of funds appropriated for the Council and with the approval of the Council.

"**§ 143-138.12. North Carolina State Residential Building Code.**

(a) Preparation and Adoption. – The Residential Building Code Council may prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Residential Building Code for one-family and two-family residential buildings. Before the adoption of the Code, or any part of the Code, the Council shall hold at least one public hearing. A notice of the public hearing shall be published in the North Carolina Register at least 15 days before the date of the hearing. Notwithstanding G.S. 150B-2(8a)h., the North Carolina State Residential Building Code as adopted by the Residential Building Code Council is a rule within the meaning of G.S. 150B-2(8a) and shall be adopted in accordance with the procedural requirements of Article 2A of Chapter 150B of the General Statutes.

The Council shall request the Office of State Budget and Management to prepare a fiscal note for a proposed Code change that has a substantial economic impact, as defined in G.S. 150B-21.4(b1) or that increases the cost of residential housing by eighty dollars ($80.00) or more per housing unit. The change may become effective only in accordance with subsection (d) of this section. Neither the Department of Insurance nor the Council shall be required to expend any monies to pay for the preparation of any fiscal note under this section by any person outside of the Department or Council unless the Department or Council contracts with a third-party vendor to prepare the fiscal note.

(b) Contents of the Code. – The North Carolina State Residential Building Code, as adopted by the Residential Building Code Council, may include reasonable and suitable classifications of buildings and structures as to both use and occupancy; general building restrictions as to location, height, and floor areas; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys and other facilities connected with the buildings and structures; and any other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. These Code

provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in subsection (e) of this section. These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall have an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval and shall be installed in accordance with either the standard of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the property owner shall retain or provide as proof of compliance.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building rules applicable to farm buildings located outside the building-rules jurisdiction of any municipality.

Provided further, that no building permit shall be required under the Code or any local variance thereof approved under subsection (e) of this section for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single-family residence or farm building unless the work involves: (i) the addition, repair, or replacement of load-bearing structures, (ii) the addition (excluding replacement of same size and capacity) or change in the design of plumbing, (iii) the addition, replacement, or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment, (iv) the use of materials not permitted by the North Carolina State Residential Building Code, (v) or the addition (excluding replacement of like grade of fire resistance) of roofing.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users of the Code, the Code shall include as appendices any rule relating to sanitation adopted by the Commission for Health Services which the Residential Building Code Council believes pertinent.

In addition, the Code may include references to such other rules of special types, such as those of the Medical Care Commission and the Department of Public Instruction, as may be useful to persons using the Code. No rule issued by any agency other than the Residential Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (i) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied petroleum gas from the outlet of the first stage pressure regulator to and including each liquefied petroleum gas utilization device within a building or structure covered by the

Code, or (ii) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

(c) Standards to Be Followed in Adopting the Code. – All regulations contained in the North Carolina State Residential Building Code shall have a reasonable and substantial connection with the public health, safety, morals, or general welfare, and their provisions shall be construed reasonably to those ends. Requirements of the Code shall conform to good engineering practice. The Council shall adopt the requirements of the International Building Code of the International Code Council.

(d) Amendments of the Code. – The Residential Building Code Council may revise and amend the North Carolina State Residential Building Code, either on its own motion or upon application from any citizen, State agency, or political subdivision of the State. In adopting any amendment, the Council shall comply with the same procedural requirements and the same standards set forth above for adoption of the Code.

Handbooks providing explanatory material on Code provisions shall be provided no later than 180 days following adoption of the Code and shall be updated with each revision of the Code or, in the discretion of the Council, more frequently. The Department may charge a reasonable fee for the handbooks.

(e) Effect Upon Local Codes. – The North Carolina State Residential Building Code shall apply throughout the State, from the time of its adoption. Approved rules shall become effective in accordance with G.S. 150B-21.3. However, any political subdivision of the State may adopt a fire prevention code and floodplain management regulations within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than floodplain management regulations and those permitted by G.S. 160A-436, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) of this section. Local floodplain regulations may regulate all types and uses of buildings or structures located in flood hazard areas identified by local, State, and federal agencies and include provisions governing substantial improvements, substantial damage, cumulative substantial improvements, lowest floor elevation, protection of mechanical and electrical systems, foundation construction, anchorage, acceptable flood resistant materials, and other measures the political subdivision deems necessary considering the characteristics of its flood hazards and vulnerability. In the absence of approval by the Residential Building Code Council, or in the event that approval is withdrawn, local fire prevention codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to

regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards, and are not matters in conflict with the State Residential Building Code, shall be approved.

(f) Publication and Distribution of Code. – The Residential Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Residential Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	1
Attorney General (Library)	1
Commissioner of Agriculture	1
Commissioner of Labor	1
Commissioner of Insurance	1
Department of Environment and Natural Resources	1
Department of Health and Human Services	1
Department of Juvenile Justice and Delinquency Prevention	1
Board of Transportation	1
Utilities Commission	1
Department of Administration	1
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Clerk of the Superior Court	1 each
Department of Cultural Resources [State Library]	5
Supreme Court Library	2
Legislative Library	1
Office of Administrative Hearings	1
Rules Review Commission	1
Schools	
All State-supported colleges and universities in the State of North Carolina	*1 each
Local Officials	
Clerks of the Superior Courts	1 each
Chief Building Inspector of each incorporated municipality or county	1

In addition, the Residential Building Code Council shall make additional copies available at the price it deems reasonable to members of the general public.

(g) Violations. – Any person who shall be adjudged to have violated this Article or the North Carolina State Residential Building Code, except for violations of occupancy limits established by either, shall be guilty of a Class 3 misdemeanor and shall, upon conviction, only be liable to a fine, not to exceed fifty dollars ($50.00), for each offense. Each 30 days that such violation continues shall constitute a separate and distinct offense. Violation of occupancy limits established pursuant to the North Carolina State Residential Building Code shall be a Class 3 misdemeanor. Any violation incurred more than one year after another conviction for violation of the occupancy limits shall be treated as a first offense for purposes of establishing and imposing penalties.

"§ 143-138.13. Enforcement of the North Carolina State Residential Building Code.

(a) Procedural Requirements. – Subject to the provisions set forth herein, the Residential Building Code Council shall adopt such procedural requirements in the North Carolina State Residential Building Code as shall appear reasonably necessary for adequate enforcement of the Code while safeguarding the rights of persons subject to the Code.

(b) General Building Regulations. – The Insurance Commissioner shall have general supervision, through the Division of Engineering of the Department of Insurance, of the administration and enforcement of all sections of the North Carolina State Residential Building Code pertaining to general building restrictions and regulations and the construction of buildings generally. The Insurance Commissioner, by means of the Division of Engineering, shall exercise the Commissioner's duties in the enforcement of the North Carolina State Residential Building Code (including local building codes which have superseded the State Residential Building Code in a particular political subdivision pursuant to G.S. 143-138.12(e)) in cooperation with local officials and local inspectors duly appointed by the governing body of any municipality or board of county commissioners pursuant to Part 5 of Article 19 of Chapter 160A of the General Statutes, Part 4 of Article 18 of Chapter 153A of the General Statutes, or any other applicable statutory authority.

(c) Remedies. – In case any building or structure is maintained, erected, constructed, or reconstructed or its purpose altered so that it becomes in violation of this Article or of the North Carolina State Residential Building Code, either the local enforcement officer or the State Commissioner of Insurance or other State official with responsibility under this section may, in addition to other remedies, institute any appropriate action or proceeding to: (i) prevent the unlawful maintenance, erection, construction, or reconstruction or alteration of purpose, or overcrowding, (ii) restrain, correct, or abate the violation, or (iii) prevent the occupancy or use of the building, structure, or land until the violation is corrected. In addition to the civil remedies set out in G.S. 160A-175 and G.S. 153A-123, a county, city, or other political subdivision authorized to enforce the North Carolina State Residential Building Code within its jurisdiction may, for the purposes stated in (i) through (iii) of this subsection, levy a

civil penalty for violation of the fire prevention code of the North Carolina State Residential Building Code, which penalty may be recovered in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after the offender has been cited for the violation. If the Commissioner or other State official institutes an action or proceeding under this section, a county, city, or other political subdivision may not institute a civil action under this section based upon the same violation. Appeals from the imposition of any remedy set forth herein, including the imposition of a civil penalty by a county, city, or other political subdivision, shall be as provided in G.S. 160A-434.

"**§ 143-138.14. Introduction and instruction of the North Carolina State Residential Building Code.**

Prior to the effective date of Code changes pursuant to G.S. 143-138.12, the Residential Building Code Council and Department of Insurance shall provide for instructional classes for the various trades affected by the Code. The Department of Insurance shall develop the curriculum for each class but shall consult the affected licensing boards and trade organizations. The curriculum shall include explanations of the rationale and need for each Code amendment or revision. Classes may also be conducted by, on behalf of, or in cooperation with licensing boards, trade associations, and professional societies. The Department of Insurance may charge fees sufficient to recover the costs it incurs under this section. The Council shall ensure that courses are accessible to persons throughout the State."

SECTION 7. There is established in the General Assembly the State Construction Task Force to develop legislative recommendations to streamline the State government construction review and approval process.

The task force shall undertake a comprehensive analysis of current agency review responsibilities in order to recommend steps to be taken to minimize the time required for project review and approval, eliminate unnecessary duplication of review efforts by State agencies, and minimize conflicting review comments by agency personnel, while at the same time ensuring the public health, safety, and welfare and the quality of State facilities.

The State Construction Task Force shall be composed of 13 members appointed as follows:

(1) Two members of the House of Representatives at the time of their appointment, appointed by the Speaker of the House of Representatives;

(2) Two members of the Senate at the time of their appointment, appointed by the President Pro Tempore of the Senate;

(3) One member who represents The University of North Carolina, appointed by the President Pro Tempore of the Senate;

(4) One member who represents the Community College System, appointed by the Speaker of the House of Representatives;

(5) One member who represents the Department of Insurance, appointed by the President Pro Tempore of the Senate;

(6) One member who represents the State Construction Office, appointed by the Speaker of the House of Representatives;
(7) One member who represents the State Building Commission, appointed by the President Pro Tempore of the Senate;
(8) One member who represents the Consulting Engineers Council of North Carolina, Inc., appointed by the Speaker of the House of Representatives;
(9) One member who represents the American Institute of Architects of North Carolina, appointed by the President Pro Tempore of the Senate;
(10) One member who represents the Associated General Contractors of America, Carolinas Branch, Incorporated, appointed by the Speaker of the House of Representatives; and
(11) One member who represents the Professional Engineers of North Carolina, Inc., appointed by the President Pro Tempore of the Senate.

The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each select a legislative member from their appointments to serve as cochair of the task force. Meetings shall be called at the will of the cochairs.

All members shall serve at the will of their appointing officer. Unless removed or resigned, members shall serve until the task force has made its report. Vacancies in membership shall be filled by the appropriate appointing officer.

Upon approval of the Legislative Services Commission, the Legislative Services Office shall assign professional and clerical staff to assist in the work of the task force. The professional staff shall include the appropriate staff from the Fiscal Research, Research, and Legislative Drafting Divisions of the Legislative Services Office of the General Assembly. Clerical staff shall be furnished to the task force through the offices of the House of Representatives and Senate Supervisors of Clerks. The task force may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The task force, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information and any data within their possession or ascertainable from their records and the power to subpoena witnesses.

Members of the task force shall receive per diem, subsistence, and travel allowances as follows:

(1) Task force members who are members of the General Assembly, at the rate established in G.S. 120-3.1;
(2) Task force members who are officials or employees of the State or of local government agencies, at the rate established in G.S. 138-6; and
(3) All other task force members, at the rate established in G.S. 138-5.

The State Construction Task Force shall report the results of its study, together with any legislative proposals, to the 2004 Regular Session of the 2003 General Assembly, within a week of its convening.

SECTION 8. The Building Code Council shall adopt rules or amend the North Carolina State Building Code consistent with Sections 3 through 5 of this act on or before October 1, 2004. The Department of Insurance shall adopt rules to implement this act and shall make recommendations, including legislative proposals for statutory revisions required to establish a separate State Building Code and Building Code Council for one-family and two-family residential structures. The Department shall report its recommendations to the General Assembly by March 1, 2004.

SECTION 9. Sections 1 through 6 of this act become effective October 1, 2004, and apply to permits issued on or after that date. The remainder of this act becomes effective October 1, 2003.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 15, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Canales	MFIS
Amy Jo Horne	NCMS
Carol Scheele	NC Medical Society
Steve Saltzman	citizen
Amy Fulbright	Hunton & Williams
Charles Ellis	NCRMA
John Sr.	NCRMA
Colleen Kochanek	Hefer & Caldwell, P.A.
John McLawhorn	Dept. of State Treasurer
Cressy Porter	Smith Anderson
Dana Simpson	Smith Anderson

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 15, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mollie Smith	GSK
Gary Salamido	GSK
Rob Schofield	NC Justice Center
Jim Edwards	DMV
Sharon Matthews	DOT. DMV
Diane Johnson	DMV
Chuck Congleton	NC DOC
DAVID BARNES	P+S
ANN LUCE	DUKE
Sarah Sandlin	WCSR
David Crawford	AIA North Carolina

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 15, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Erin Culbreth	LBA
Larry Beverly	LBA
Jesse Johnson	Rossdale Group
John M May	NC CWA Council
Dina DiMaio	NCBA
Keith Corbett	CRL
McKinley Wooten	NC DOA
[illegible]	NC PBA
Rowe [illegible]	GTI Group
Larry Beckner	Household Financial Group
Bill McAulay	PSNC Energy
[illegible]	Fund Citizen Bank

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 15, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	Sprint
Dan Wescott	Sprint
Steve Mitchell	Novartis
Evelyn Hawthorne	DHHR
Robert Pasichal	Young Moore
[signature]	MFAS
Dallas Baker	Intern - Sen. Gulley
Joyce Peters	JP Assoc
Frank Folger	DOI
[signature]	NC CWA Political Comm
Doris Weaver	11

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 15, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Debra Dew	BellSouth
Ted Kaplan	Kel.
Mark Benson	Capitol Group
Bill Rowe	NC Justice Ctr.
Brian R. Anderson	Sen. Pittenger's Intern
Camille Stell	Kennedy Covington
John Winrow	NC Statewatch
David Stoller	State Farm
John McHugh	Gov Office
Cam Crew	BPMHL
Lisa Reiley	Capitol Group

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 15, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	MCI
	Rogers
	Hagen
Bill Shamill	Red Oak
Stan Pace	Verizon
JIM BELL	NCMA
Hugh Tilson	NCHA
	NC State
PAUL MAHONEY	NCAAP
GLENN WELLS	HUFFMAN-LAROCHE
Bill Pittman	The Pittman Law Firm
	Cabtree Alexander PLL

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 15, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Martin	NC Home Builders Assn.
Tim Minton	NC Home Builders Assn
Brian Shank	AstraZeneca
John Bowdish	AstraZeneca
Sam Johnson	Atty
Kevin Leonard	WCSR
Bill Wilson	NCATL
John Thomas Harris	L.A. Harris & Assoc Inc
Tracy Little	NCDOC
Karen Brown	Correction Enterprises
Dick Taylor	Reagan

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 15, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Hamm	SSI

AGENDA

SENATE COMMERCE COMMITTEE
Wednesday, April 16, 2003 at 2:00 PM
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Bills to be Considered

SB 107	MV Insurers-No Mandate on Nonoriginal Parts.	Senator Carpenter
SB 109	Motor Vehicle Glass Repairs.	Senator Carpenter
SB 521	Pyrotechnic Regulation Enhanced.	Senator Rand
SB 813	Controller's Fee.	Senator Rand
SB 558	Disclosure of Prior MV Damage.	Senator Hoyle
SB 559	Clarify MV Dealer Franchise Laws.	Senator Hoyle
SB 661	Health Care Information Privacy.	Senator Reeves
SB 750	Increase Permit Limit for Breweries	Senator Hagan
SB 995	School Construction/Repair Flexibility	Senator Garrou

III. Other Business

IV. Adjournment

SENATE COMMERCE COMMITTEE
Wednesday, April 16, 2003 at 2:00 p.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 2:00 p.m. on Wednesday, April 16, 2003, in Room 1027 of the Legislative Building. Twenty-one members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced the pages: Heather Louise Finch of Bailey, sponsored by Senator Swindell; Melinda Jones of Laurinburg, sponsored by Senator Purcell; and Harry "C. J." Johnson of Greensboro, sponsored by Senator Dorsett.

Senator Soles introduced Senator Robert Carpenter to explained SB 109, Motor Vehicle Glass Repairs. Senator Carpenter moved the adoption of a committee substitute. The motion carried. Senator Carpenter moved for an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Senator Carpenter explained SB 107, MV Insurers-No Mandate on Nonoriginal Parts. He moved the adoption of a committee substitute. The motion carried. Senator Katie Dorsett asked for an amendment to the committee substitute. While the amendment was being written, Senator Soles temporarily displaced SB 107 and moved to the next bill.

Senator Linda Garrou was recognized to explain SB 995, School Construction/Repair Flexibility. She moved for the adoption of a committee substitute. The motion carried. Senator Patrick Ballantine moved an unfavorable report of the bill, but a favorable report of the committee substitute. Senator Garrou moved the adoption of an amendment to the committee substitute. The motion carried. Mr. Tim Williford, a mechanical contractor from Wilson, North Carolina, spoke against the bill, saying that smaller contractors are losing the ability to compete. Senator Garrou moved for an unfavorable report of the original bill, but a favorable report of the committee substitute as amended and engrossed into a new committee substitute. The motion carried.

Senator Soles returned to discussion of SB 107. Senator Dorsett moved the adoption of an amendment. The motion carried. Senator Carpenter moved for an unfavorable report of the original bill, but a favorable report of the committee substitute as amended and engrossed into a new committee substitute. The motion carried.

Senator Rand was recognized to explain SB 521, Pyrotechnic Regulation Enhanced. He moved the adoption of an amendment. The motion carried. He then moved for a favorable report of the bill as amended and that it be engrossed into a committee substitute. The motion carried.

Senator Rand then explained SB 813, Controller's Fee. Senator Hoyle moved for a favorable report of the bill. The motion carried.

Senator Hoyle was recognized to speak on SB 559, Clarify MV Dealer Franchise Laws. He moved the adoption of a committee substitute. The motion carried. He then moved for an

unfavorable report of the original bill, but a favorable report of the committee substitute. The motion carried.

Senator Hoyle then explained SB 558, Disclosure of Prior MV Damage. Senator Dorsett moved the adoption of a committee substitute. The motion carried. Senator Hoyle moved for an unfavorable report of the original bill, but a favorable report of the committee substitute. The motion carried.

The meeting adjourned at 3:00 p.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Thursday, April 17, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **107** MV Insurers-No Mandate on Nonoriginal Parts.

Draft Number:	PCS 65266
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **109** Motor Vehicle Glass Repairs.

Draft Number:	PCS 40015
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **469** Unfair Trade Practices/Life Insurance Sales.

Draft Number:	PCS 75236
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **558** Disclosure of Prior MV Damage.

Draft Number:	PCS 55176
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **559** Clarify MV Dealer Franchise Laws.

Draft Number:	PCS 35240
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **995** School Construction/Repair Flexibility.

Draft Number:	PCS 35243
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 6

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Wednesday, April 16, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **813** Controller's Fee.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

CORRECTED REPORT

Monday, April 21, 2003

SENATOR RAND.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **290** Clarify Certain Building Code Requirement.

Draft Number:	PCS 85215
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Changes Public to Local:	Yes

S.B. **521** Pyrotechnic Regulation Enhanced.

Draft Number:	PCS 40022
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **620** Purchasing Flexibility for Schools.

Draft Number:	PCS 55177
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **847** Clarify Fees Charged to Residential Tenants.

Draft Number:	PCS 65267
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 107

Short Title:	MV Insurers-No Mandate on Nonoriginal Parts.	(Public)
Sponsors:	Senator Carpenter.	
Referred to:	Commerce.	

February 20, 2003

A BILL TO BE ENTITLED

AN ACT PROHIBITING AN INSURER FROM AUTHORIZING OR REQUIRING THE USE OF NONORIGINAL CRASH REPAIR PARTS OR NONORIGINAL AUTO GLASS FOR MOTOR VEHICLE REPAIRS WITHOUT THE WRITTEN CONSENT FROM THE INSURED OR CLAIMANT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-90. Use of nonoriginal crash repair parts.**

(a) As used in this section, the following definitions apply:

(1) "Insurer" includes any person authorized to represent an insurer with respect to a claim.

(2) "Nonoriginal crash repair part" means a part for a motor vehicle made or remanufactured by a company other than the original manufacturer or a licensed affiliate and is limited to only the following: metal, fiberglass, or plastic motor vehicle crash repair parts; hood; fender; radiator support; cowl panel; doors; roof; rocker panel; quarter panel; trunk lid; and auto glass (including windshields).

(b) An insurer may not authorize or require the use of a nonoriginal crash repair part on a motor vehicle that is five years old or newer without first obtaining the written consent of the insured or other claimant. The consent shall be verified by the insured's or other claimant's signature on the repair estimate, appraisal, or work order.

(c) An insurer shall notify the insured or claimant anytime that a nonoriginal crash repair part or auto glass is to be installed.

(d) It is insurance fraud for any insurer, automobile repair facility, or parts person to place a nonoriginal crash repair part, nonoriginal windshield, or nonoriginal auto glass on a motor vehicle and to submit an invoice for an original repair part.

(e) Any insurer or other person who has reason to believe that fraud has occurred under this section shall report that fraud to the Commissioner for further action pursuant to G.S. 58-2-160.

(f) A violation of the provisions of this act is punishable by a fine of two thousand dollars ($2,000)."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 107:
MV Insurers - No Mandate on Nonoriginal Parts

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Carpenter
Date:	April 16, 2003	**Summary by:**	Wendy Graf Ray
Version:	Proposed Committee Substitute S109-CSLK-5[v.3]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 107 would require an insurer to notify an insured or claimant when nonoriginal crash repair parts are used in repairs.***

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 107 would define "nonoriginal crash repair part" as any part for a motor vehicle made or remanufactured by a company other than the original manufacturer or licensed affiliate. The bill would require an insurer, or authorized representative of the insurer, to notify an insured or claimant whenever a nonoriginal crash repair part is installed.

The bill would provide that it constitutes insurance fraud for a repair facility or parts person to install a nonoriginal crash repair part on a vehicle and then submit an invoice for an original part. Any person who believes this type of fraud has occurred would be required to report it to the Commissioner of Insurance, who is authorized under G.S. 58-2-160 to conduct investigations of any known or suspected fraudulent insurance claim. Violations of the act would be punishable by a fine of $2,000.

The bill would also direct the Rate Bureau to develop a policy endorsement to allow policyholders to elect coverage specifying the exclusive use of original equipment manufactured crash parts rather than nonoriginal parts.

EFFECTIVE DATE: The bill would become effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 107
PROPOSED COMMITTEE SUBSTITUTE S107-CSLK-5 [v.2]

4/15/2003 4:36:22 PM

Short Title: MV Insurers-No Mandate on Nonoriginal Parts. (Public)

Sponsors:

Referred to:

February 20, 2003

A BILL TO BE ENTITLED

AN ACT REQUIRING AN INSURER TO DISCLOSE THE USE OF NONORIGINAL CRASH REPAIR PARTS OR NONORIGINAL AUTO GLASS FOR MOTOR VEHICLE REPAIRS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-90. Use of nonoriginal crash repair parts.**

(a) As used in this section, the following definitions apply:

(1) "Insurer" includes any person authorized to represent an insurer with respect to a claim.

(2) "Nonoriginal crash repair part" means a part for a motor vehicle made or remanufactured by a company other than the original manufacturer or a licensed affiliate and is limited to only the following: metal, fiberglass, or plastic motor vehicle crash repair parts; hood; fender; radiator support; cowl panel; doors; roof; rocker panel; quarter panel; trunk lid; and auto glass (including windshields).

(b) An insurer shall notify the insured or claimant anytime that a nonoriginal crash repair part or auto glass is to be installed.

(c) It is insurance fraud for an automobile repair facility or parts person to place a nonoriginal crash repair part, nonoriginal windshield, or nonoriginal auto glass on a motor vehicle and to submit an invoice for an original repair part.

(d) Any insurer or other person who has reason to believe that fraud has occurred under this section shall report that fraud to the Commissioner for further action pursuant to G.S. 58-2-160.

(e) A violation of the provisions of this act is punishable by a fine of two thousand dollars ($2,000)."

SECTION 2. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-16-03

S. B. No. 107 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE PCS-S107-CSLK-5

Rep.)
Sen.) DORSETT

1 moves to amend the bill on page 1, line 18
2 ( ) WHICH CHANGES THE TITLE
3 by INSERTING BETWEEN THE WORDS "NOTIFY" AND "THE"
4 THE WORDS "IN WRITING".
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SIGNED Patricia S. Dorsett

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 107
PROPOSED COMMITTEE SUBSTITUTE S107-PCS65266-LK-5

Short Title: MV Insurers-No Mandate on Nonoriginal Parts. (Public)

Sponsors:

Referred to:

February 20, 2003

A BILL TO BE ENTITLED

AN ACT REQUIRING AN INSURER TO DISCLOSE THE USE OF NONORIGINAL CRASH REPAIR PARTS OR NONORIGINAL AUTO GLASS FOR MOTOR VEHICLE REPAIRS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-90. Use of nonoriginal crash repair parts.**

(a) As used in this section, the following definitions apply:

(1) "Insurer" includes any person authorized to represent an insurer with respect to a claim.

(2) "Nonoriginal crash repair part" means a part for a motor vehicle made or remanufactured by a company other than the original manufacturer or a licensed affiliate and is limited to only the following: metal, fiberglass, or plastic motor vehicle crash repair parts; hood; fender; radiator support; cowl panel; doors; roof; rocker panel; quarter panel; trunk lid; and auto glass (including windshields).

(b) An insurer shall notify in writing the insured or claimant anytime that a nonoriginal crash repair part or auto glass is to be installed.

(c) It is insurance fraud for an automobile repair facility or parts person to place a nonoriginal crash repair part, nonoriginal windshield, or nonoriginal auto glass on a motor vehicle and to submit an invoice for an original repair part.

(d) Any insurer or other person who has reason to believe that fraud has occurred under this section shall report that fraud to the Commissioner for further action pursuant to G.S. 58-2-160.

(e) A violation of the provisions of this act is punishable by a fine of two thousand dollars ($2,000)."

SECTION 2. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-41. Development of policy endorsement for exclusive use of original equipment manufactured crash parts.**

The Rate Bureau shall develop a policy endorsement to be filed with the Commissioner for approval that permits policyholders to elect nonfleet private passenger motor vehicle physical damage coverage specifying the exclusive use of original equipment manufactured crash parts."

SECTION 3. This act becomes effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 109

Short Title:	Motor Vehicle Glass Repairs.	(Public)
Sponsors:	Senator Carpenter.	
Referred to:	Commerce.	

February 20, 2003

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT COUPONING OR WAIVING OF DEDUCTIBLES IN MOTOR VEHICLE GLASS REPAIRS AND AUTOMOTIVE COLLISION REPAIR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-180 reads as rewritten:

"**§ 58-3-180. Motor vehicle repairs; selection by claimant.**

(a) A policy covering damage to a motor vehicle shall allow the claimant to select the repair service or source for the repair of the ~~damage.~~ damage, including the repair service or source for the repair or replacement of automobile glass or collision repair.

(b) The amount determined by the insurer to be payable under a policy covering damage to a motor vehicle shall be paid regardless of the repair service or source selected by the claimant.

(c) Any person who violates this section is subject to the applicable provisions of G.S. 58-2-70 and G.S. 58-33-45, provided that the maximum civil penalty that can be assessed under G.S. 58-2-70(d) for a violation of this section is two thousand dollars ($2,000)."

SECTION 2. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-36. Restrictions on automobile glass repair or replacement.**

No person, business, or other legal entity doing business in this State that installs, repairs, or replaces automobile glass knowingly shall engage in any of the following acts:

(1) Offer to finance payment of a customer's deductible on terms different from terms offered to customers not making an insurance claim.

(2) Promising or offering to provide any credit, incentive, gift, rebate, or special financing arrangement in satisfaction of all or part of an

insurance deductible or co-payment owed by an insured under a policy of insurance.

(3) Advertise, promote, or represent by any media, telemarketers, or others, that services are 'free' if in fact an insurer will pay for the service or advertise or make offers for the purpose of soliciting a claim against a property or casualty insurer.

(4) Engage in offering to defer collection of, discount, or issue a repayment of a customer's deductible based in whole, or in part, on the availability of insurance coverage.

(b) A violation of this section shall be considered an unfair trade practice, as prohibited by G.S. 75-1.1.

(c) Any person who suffers an economic loss as a result of the violation of this section may bring an action to recover damages in the General Court of Justice. Actions brought pursuant to this section shall be tried in the county where the violation occurred or in any county where the defendant resides or conducts, transacts, or has transacted business."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 109:
Motor Vehicle Glass Repairs

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Carpenter
Date:	April 16, 2003	**Summary by:**	Wendy Graf Ray
Version:	Proposed Committee Substitute S109-CSSU-2[v.1]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 109 clarifies that insurance policies must allow claimants to select a repair service for the repair of automobile glass and prohibits the waiving of deductibles or offering of other incentives for the repair of automobile glass.***

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 109 would do two things:

- It would clarify that an insurance policy covering motor vehicle damage must allow a claimant to select the repair service or source for the repair or replacement of automobile glass. The law currently requires that policies covering motor vehicle damage allow claimants to select the repair service or source for the repair of damages and requires insurance companies to pay under a policy regardless of the repair service or source selected by the claimant.
- It would also prohibit all of the following acts engaged in by companies installing, repairing, or replacing automobile glass:
    - Offering to finance payment of a customer's deductible on terms different from terms offered to customers not making an insurance claim.
    - Promising any credit, incentive, gift, rebate, or special financing arrangement in satisfaction of an insurance deductible or co-payment owed by an insured under a policy of insurance.
    - Advertising that services are "free" if in fact an insurer will pay for the service, or advertising or making offers for the purpose of soliciting a claim against a property or casualty insurer.
    - Offering to defer collection of, discount, or issue a repayment of a customer's deductible based on the availability of insurance coverage.

  Engaging in any of these acts would be considered an unfair trade practice under G.S. 75-1.1. Violators would be subject to a civil penalty of up to $5000 per violation and could be sued for treble damages by any party injured by these acts.

EFFECTIVE DATE: The bill would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 109
PROPOSED COMMITTEE SUBSTITUTE S109-CSSU-2 [v.1]

3/3/2003 11:44:51 AM

Short Title: Motor Vehicle Glass Repairs. (Public)

Sponsors:

Referred to:

February 20, 2003

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT COUPONING OR WAIVING OF DEDUCTIBLES IN MOTOR VEHICLE GLASS REPAIRS AND AUTOMOTIVE COLLISION REPAIR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-180(a) reads as rewritten:

"(a) A policy covering damage to a motor vehicle shall allow the claimant to select the repair service or source for the repair of the ~~damage.~~damage, including the repair service or source for the repair or replacement of automobile glass or collision repair."

SECTION 2. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-36. Restrictions on automobile glass repair or replacement.**

No person, business, or other legal entity doing business in this State that installs, repairs, or replaces automobile glass knowingly shall engage in any of the following acts:

(1) Offer to finance payment of a customer's deductible on terms different from terms offered to customers not making an insurance claim.

(2) Promising or offering to provide any credit, incentive, gift, rebate, or special financing arrangement in satisfaction of all or part of an insurance deductible or co-payment owed by an insured under a policy of insurance.

(3) Advertise, promote, or represent by any media, telemarketers, or others, that services are 'free' if in fact an insurer will pay for the service or advertise or make offers for the purpose of soliciting a claim against a property or casualty insurer.

(4) Engage in offering to defer collection of, discount, or issue a repayment of a customer's deductible based in whole, or in part, on the availability of insurance coverage.

(b) A violation of this section shall be considered an unfair trade practice, as prohibited by G.S. 75-1.1.

(c) Any person who suffers an economic loss as a result of the violation of this section may bring an action to recover damages in the General Court of Justice. Actions brought pursuant to this section shall be tried in the county where the violation occurred or in any county where the defendant resides or conducts, transacts, or has transacted business."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 109
PROPOSED COMMITTEE SUBSTITUTE S109-PCS40015-SU-2

Short Title: Motor Vehicle Glass Repair. (Public)

Sponsors:

Referred to:

February 20, 2003

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT COUPONING OR WAIVING OF DEDUCTIBLES IN MOTOR VEHICLE GLASS REPAIR AND AUTOMOTIVE COLLISION REPAIR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-180(a) reads as rewritten:

"(a) A policy covering damage to a motor vehicle shall allow the claimant to select the repair service or source for the repair of the ~~damage.~~damage, including the repair service or source for the repair or replacement of automobile glass or collision repair."

SECTION 2. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-36. Restrictions on automobile glass repair or replacement.**

No person, business, or other legal entity doing business in this State that installs, repairs, or replaces automobile glass knowingly shall engage in any of the following acts:

(1) Offer to finance payment of a customer's deductible on terms different from terms offered to customers not making an insurance claim.

(2) Promise or offer to provide any credit, incentive, gift, rebate, or special financing arrangement in satisfaction of all or part of an insurance deductible or co-payment owed by an insured under a policy of insurance.

(3) Advertise, promote, or represent by any media, telemarketers, or others that services are 'free' if in fact an insurer will pay for the service or advertise or make offers for the purpose of soliciting a claim against a property or casualty insurer.

(4) Engage in offering to defer collection of, discount, or issue a repayment of a customer's deductible based, in whole or in part, on the availability of insurance coverage.

(b) A violation of this section shall be considered an unfair trade practice, as prohibited by G.S. 75-1.1.

(c) Any person who suffers an economic loss as a result of the violation of this section may bring an action to recover damages in the General Court of Justice. Actions brought pursuant to this section shall be tried in the county where the violation occurred or in any county where the defendant resides or conducts, transacts, or has transacted business."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 558

Short Title:	Disclosure of Prior MV Damage.	(Public)
Sponsors:	Senators Hoyle, Swindell, Berger; and Smith.	
Referred to:	Commerce.	

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS AND TRANSFERORS OF MOTOR VEHICLES UNAWARE OF PRIOR DAMAGE OR WHEN PRIOR DAMAGE WAS MINOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-71.3 is amended by adding a new subsection to read:

"(a1) Any motor vehicle that is declared a total loss by an insurance company licensed and approved to conduct business in North Carolina, in addition to the designation noted in subsection (a) of this section, shall:

(1) Have the title and registration card marked "TOTAL LOSS CLAIM" in 14-point type or larger.

(2) Have a metal plate inserted into the doorjamb of that vehicle that states "TOTAL LOSS CLAIM." Should that vehicle be later reconstructed, the plate shall be inserted in the doorjamb of the reconstructed vehicle with the same Vehicle Identification Number as the total loss vehicle."

SECTION 2. G.S. 20-71.3(b) reads as rewritten:

"(b) Any motor vehicle up to and including six model years old damaged by collision or other occurrence, that is to be retitled in this State, shall be subject to preliminary and final inspections by the Enforcement Section of the Division. For purposes of this subsection, the term 'six model years' shall be calculated by counting the model year of the vehicle's manufacture as the first model year and the current model year as the final model year.

These inspections serve as antitheft measures and do not certify the safety or road-worthiness of a vehicle."

SECTION 3. G.S. 20-71.4 reads as rewritten:

"**§ 20-71.4. Failure to disclose damage to a vehicle shall be a misdemeanor.**

(a) It shall be unlawful ~~and constitute a Class 2 misdemeanor~~ for any transferor who ~~knows or reasonably should know~~ has actual knowledge that:

(1) A motor vehicle up to and including five model years old has been involved in a collision or other occurrence to the extent that the cost of repairing that vehicle exceeds twenty-five percent (25%) of its fair market retail value at the time of the ~~damage; collision~~ or other occurrence, or

(2) The motor vehicle is, or was, a flood vehicle, a reconstructed vehicle, or a salvage motor vehicle

to fail to disclose that fact in writing to the transferee prior to the transfer of the vehicle. For purposes of this subsection, the term 'five model years' shall be calculated by counting the model year of the vehicle's manufacture as the first model year and the current model year as the final model year. Failure to disclose any of the above information within the actual knowledge of the transferor will also result in civil liability under G.S. 20-348. The Commissioner may prepare forms to carry out the provisions of this section.

(b) It shall be unlawful for any person to remove the title or supporting documents to any motor vehicle from the State of North Carolina with the intent to conceal damage (or damage which has been repaired) occurring as a result of a collision or other occurrence.

(c) It shall be unlawful for any person to remove, tamper with, alter, or conceal the 'TOTAL LOSS CLAIM' metal plate that is affixed to the door of any total loss claim vehicle. It shall be unlawful for any person to reconstruct a total loss claim vehicle and not include or affix a 'TOTAL LOSS CLAIM' metal plate to the doorjamb of the rebuilt vehicle.

(d) Violation of this ~~statute~~ section shall constitute a Class 2 misdemeanor."

SECTION 4. G.S. 20-305.1(e) reads as rewritten:

"(e) Damage/Repair Disclosure. – Notwithstanding the provisions of subdivision (d)(4) of this section and in supplementation thereof, a new motor vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle prior to entering into a sales contract any damage and repair to the new motor vehicle if the damage exceeds five percent (5%) of the manufacturer's suggested retail price as calculated at the rate of the dealer's authorized warranty rate for labor and parts.

(1) A new motor vehicle dealer is not required to disclose to a purchaser that any glass, tires or bumper of a new motor vehicle was damaged or that any other damage occurred to a new motor vehicle at any time if the total cost of all repairs fails to exceed five percent (5%) of the manufacturer's suggested retail price as calculated at the time of the dealer's authorized warranty rate for labor and parts, and if the damaged item has been replaced with original or comparable equipment.

(2) If disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract or have or file any cause of action or claim against the dealer or manufacturer for breach of contract, breach of warranty, fraud, concealment, unfair and deceptive acts or practices,

or otherwise due solely to the fact that the new motor vehicle was damaged and repaired prior to completion of the sale.

(3) For purposes of this section, "manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer which is not included within the retail price suggested by the manufacturer for the new motor vehicle."

SECTION 5. This act is effective when it becomes law.

SENATE BILL 558:
Disclosure of Prior MV Damage

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senators Hoyle, Swindell and Berger
Date:	April 16, 2003		
Version:	Proposed Committee Substitute S558-CSSU-6[v.7]	**Summary by:**	Wendy Graf Ray Committee Counsel

SUMMARY: ***Senate Bill 558 would require certificates of title and registration cards, as well as the vehicles themselves, to be marked when a motor vehicle is declared a total loss. The bill would also amend laws requiring disclosure of damage to motor vehicles by transferors of vehicles and new motor vehicle dealers.***

CURRENT LAW:

Title and registration for certain vehicles to be branded. G.S. 20-71.3(a) requires that certificates of title and registration cards contain a designation to disclose if the motor vehicle is classified as any of the following:

- Salvage motor vehicle – any vehicle damaged by collision or other occurrence to the extent that the cost of repairs would exceed 75% of its fair retail market value.
- Salvage rebuilt vehicle – any salvage vehicle that has been rebuilt.
- Reconstructed vehicle – any vehicle required to be registered that has been materially altered from original construction due to removal, addition or substitution of new or used essential parts.
- Flood vehicle – any vehicle that has been submerged in water to the extent that damage to the body, engine, transmission, or differential has occurred.
- Non-U.S.A. vehicle – any vehicle manufactured outside of the United States and not intended for sale in the United States.
- Any other classification authorized by law.

Vehicles may be retitled with an unbranded title if the cost of repairing the vehicle does not exceed 75% of its fair market value.

Inspection required for vehicles up to six model years old. G.S. 20-71.3(b) provides that vehicles up to and including 6 model years old are subject to inspections by the Enforcement Section of the Division of Motor Vehicles prior to being retitled.

Disclosure of damage to vehicles. G.S. 20-71.4 makes it unlawful for any person to transfer a motor vehicle without first disclosing the following information to the transferee in writing:

- The vehicle, if five model years old or less, has been involved in a collision or other occurrence to the extent that the cost of repairs exceeded 25% of its fair market retail value.
- The vehicle is, or was, a flood vehicle, a reconstructed vehicle, or a salvage motor vehicle.

The disclosure requirement applies if the transferor knew or should have known the information. G.S. 20-71.4 also makes it unlawful for any person to remove the title or other documents to a vehicle from the

State with the intent to conceal any damage caused by a collision or other occurrence. Violation of the provisions of this section is a Class 2 misdemeanor.

Disclosure of damage/repair by new motor vehicle dealers. G.S. 20-305.1(e) requires new motor vehicle dealers to disclose in writing to a purchaser any damage and repair to a new vehicle if the damage exceeds 5% of the manufacturer's suggested retail price. However, a dealer is not required to disclose any damage to glass, tires or bumpers if the damaged item has been replaced with original or comparable equipment.

BILL ANALYSIS:

Title and registration for total loss vehicles to be marked. Senate Bill 558 would provide that, in addition to any designations required under G.S. 20-71.3(a), a vehicle that is declared a total loss by an insurance company would be subject to the following requirements:

- The title and registration card would have to be marked "TOTAL LOSS CLAIM" in 14-point type or larger.
- A metal plate or other permanent marker that says "TOTAL LOSS CLAIM" would have to be inserted into the doorjamb, and, if the vehicle is reconstructed, the metal plate or marker would have to be inserted in the doorjamb.

Inspection for vehicles up to six model years old. The bill would clarify that "six model years" is to be calculated by counting from the model year of the vehicle's manufacture to the current model year.

Disclosure of damage to vehicles. The bill would amend the disclosure requirement for transferors of motor vehicles. The bill would require disclosure of information of which the transferor has actual knowledge rather than information the transferor knew or should have known.

The bill would also make it unlawful for any person to remove or conceal a "TOTAL LOSS CLAIM" plate or permanent marker from a vehicle, or to reconstruct a total loss vehicle without inserting the "TOTAL LOSS CLAIM" plate or marker into the rebuilt vehicle. Violation would be a Class 2 misdemeanor.

Air bag installation. The bill would make it unlawful to install an object, other than an air bag designed in accordance with federal regulations, as part of a vehicle inflation restraint system. Violation would be a Class 1 misdemeanor.

Disclosure of damage/repair by new motor vehicle dealers. The bill would make clear that new motor vehicle dealers are not required to disclose any kind of damage and repair to a vehicle prior to sale if the damage does not exceed 5% of the manufacturer's suggested retail price and any damaged item has been replaced with original or comparable equipment. It also provides that a purchaser may not file a cause of action or claim against the dealer due solely to the fact that the vehicle was damaged and repaired prior to the sale.

EFFECTIVE DATE: The act would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 558
PROPOSED COMMITTEE SUBSTITUTE S558-CSSU-6 [v.7]

4/16/2003 10:42:27 AM

Short Title: Disclosure of Prior MV Damage. (Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS AND TRANSFERORS OF MOTOR VEHICLES UNAWARE OF PRIOR DAMAGE OR WHEN PRIOR DAMAGE WAS MINOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-71.3 reads as rewritten:

"**§ 20-71.3. Salvage and other vehicles – titles and registration cards to be branded.**

(a) Motor vehicle certificates of title and registration cards issued pursuant to G.S. 20-57 shall be branded in accordance with this section.

As used in this section, "branded" means that the title and registration card shall contain a designation that discloses if the vehicle is classified as any of the following:

(1) Salvage Motor Vehicle.
(2) Salvage Rebuilt Vehicle.
(3) Reconstructed Vehicle.
(4) Flood Vehicle.
(5) Non-U.S.A. Vehicle.
(6) Any other classification authorized by law.

(a1) Any motor vehicle that is declared a total loss by an insurance company licensed and approved to conduct business in North Carolina, in addition to the designations noted in subsection (a) of this section, shall:

(1) Have the title and registration card marked "TOTAL LOSS CLAIM" in 14-point type or larger.
(2) Have a metal plate or other permanent marker inserted into the doorjamb of that vehicle that states "TOTAL LOSS CLAIM." Should that vehicle be later reconstructed, the plate or other permanent marker shall be inserted in the doorjamb of the reconstructed vehicle.

(b) Any motor vehicle up to and including six model years old damaged by collision or other occurrence, that is to be retitled in this State, shall be subject to

preliminary and final inspections by the Enforcement Section of the Division. For purposes of this subsection, the term 'six model years' shall be calculated by counting the model year of the vehicle's manufacture as the first model year and the current model year as the final model year.

These inspections serve as antitheft measures and do not certify the safety or road-worthiness of a vehicle.

(c) The Division shall not retitle a vehicle described in subsection (b) of this section that has not undergone the preliminary and final inspections required by that subsection.

(d) Any motor vehicle up to and including six model years old that has been inspected pursuant to subsection (b) of this section may be retitled with an unbranded title based upon a title application by the rebuilder with a supporting affidavit disclosing all of the following:

(1) The parts used or replaced.
(2) The major components replaced.
(3) The hours of labor and the hourly labor rate.
(4) The total cost of repair.

The unbranded title shall be issued only if the cost of repairs, including parts and labor, does not exceed seventy-five percent (75%) of its fair market retail value.

(e) Any motor vehicle more than six model years old damaged by collision or other occurrence that is to be retitled by the State may be retitled, without inspection, with an unbranded title based upon a title application by the rebuilder with a supporting affidavit disclosing all of the following:

(1) The parts used or replaced.
(2) The major components replaced.
(3) The hours of labor and the hourly labor rate.
(4) The total cost of repair.

The unbranded title shall be issued only if the cost of repairs, including parts and labor, does not exceed seventy-five percent (75%) of its fair market retail value.

(f) The Division shall maintain the affidavits required by this section and make them available for review and copying by persons researching the salvage and repair history of the vehicle.

(g) Any motor vehicle that has been branded in another state shall be branded with the nearest applicable brand specified in this section, except that no junk vehicle or vehicle that has been branded junk in another state shall be titled or registered.

(h) A branded title for a salvage motor vehicle damaged by collision or other occurrence shall be issued if the cost of repairs, including parts and labor, exceeds seventy-five percent (75%) of its fair market retail value.

(i) Once the Division has issued a branded title for a motor vehicle all subsequent titles for that motor vehicle shall continue to reflect the branding.

(j) The Division shall prepare necessary forms and may adopt rules required to carry out the provisions of this Part."

SECTION 2. G.S. 20-71.4 reads as rewritten:

"**§ 20-71.4. Failure to disclose damage to a vehicle shall be a misdemeanor.**

(a) It shall be unlawful ~~and constitute a Class 2 misdemeanor~~ for any transferor who ~~knows or reasonably should know~~ has actual knowledge that:

(1) A motor vehicle up to and including five model years old has been involved in a collision or other occurrence to the extent that the cost of repairing that vehicle exceeds twenty-five percent (25%) of its fair market retail value at the time of the ~~damage;~~ collision or other occurrence, or

(2) The motor vehicle is, or was, a flood vehicle, a reconstructed vehicle, or a salvage motor vehicle

to fail to disclose that fact in writing to the transferee prior to the transfer of the vehicle. For purposes of this subsection, the term 'five model years' shall be calculated by counting the model year of the vehicle's manufacture as the first model year and the current model year as the final model year. Failure to disclose any of the above information within the actual knowledge of the transferor will also result in civil liability under G.S. 20-348. The Commissioner may prepare forms to carry out the provisions of this section.

(b) It shall be unlawful for any person to remove the title or supporting documents to any motor vehicle from the State of North Carolina with the intent to conceal damage (or damage which has been repaired) occurring as a result of a collision or other occurrence.

(c) It shall be unlawful for any person to remove, tamper with, alter, or conceal the 'TOTAL LOSS CLAIM' metal plate or other permanent marker that is affixed to the door of any total loss claim vehicle. It shall be unlawful for any person to reconstruct a total loss claim vehicle and not include or affix a 'TOTAL LOSS CLAIM' metal plate or other permanent marker to the doorjamb of the rebuilt vehicle.

(d) Violation of this ~~statute~~ section shall constitute a Class 2 misdemeanor."

SECTION 3. Article 3 of Chapter 20 is amended by adding a new section to read:

"**§ 20-136.2. Air bag installation.**

It shall be unlawful for any person, firm or corporation to knowingly install or reinstall any object in lieu of an air bag, other than an air bag that was designed in accordance with federal safety regulations for the make, model and year of vehicle, as part of a vehicle inflation restraint system. Any person, firm or corporation violating this section shall be guilty of a Class 1 misdemeanor."

SECTION 4. G.S. 20-305.1(e) reads as rewritten:

"(e) Damage/Repair Disclosure. – Notwithstanding the provisions of subdivision (d)(4) of this section and in supplementation thereof, a new motor vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle prior to entering into a sales contract any damage and repair to the new motor vehicle if the damage exceeds five percent (5%) of the manufacturer's suggested retail price as calculated at the rate of the dealer's authorized warranty rate for labor and parts.

(1) A new motor vehicle dealer is not required to disclose to a purchaser that any ~~glass, tires or bumper of a new motor vehicle was damaged at any time~~ damage of any nature occurred to a new motor vehicle at any

time if the total cost of all repairs fails to exceed five percent (5%) of the manufacturer's suggested retail price as calculated at the time the repairs were made based upon the dealer's authorized warranty rate for labor and parts, and if the damaged item has been replaced with original or comparable equipment.

(2) If disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract or have or file any cause of action or claim against the dealer or manufacturer for breach of contract, breach of warranty, fraud, concealment, unfair and deceptive acts or practices, or otherwise due solely to the fact that the new motor vehicle was damaged and repaired prior to completion of the sale.

(3) For purposes of this section, "manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer which is not included within the retail price suggested by the manufacturer for the new motor vehicle."

SECTION 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 558
PROPOSED COMMITTEE SUBSTITUTE S558-PCS55176-SU-6

Short Title: Disclosure of Prior MV Damage. (Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS AND TRANSFERORS OF MOTOR VEHICLES UNAWARE OF PRIOR DAMAGE OR WHEN PRIOR DAMAGE WAS MINOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-71.3 reads as rewritten:

"**§ 20-71.3. Salvage and other vehicles – titles and registration cards to be branded.**

(a) Motor vehicle certificates of title and registration cards issued pursuant to G.S. 20-57 shall be branded in accordance with this section.

As used in this section, "branded" means that the title and registration card shall contain a designation that discloses if the vehicle is classified as any of the following:

(1) Salvage Motor Vehicle.
(2) Salvage Rebuilt Vehicle.
(3) Reconstructed Vehicle.
(4) Flood Vehicle.
(5) Non-U.S.A. Vehicle.
(6) Any other classification authorized by law.

(a1) Any motor vehicle that is declared a total loss by an insurance company licensed and approved to conduct business in North Carolina, in addition to the designations noted in subsection (a) of this section, shall:

(1) Have the title and registration card marked "TOTAL LOSS CLAIM" in 14-point type or larger.
(2) Have a metal plate or other permanent marker inserted into the doorjamb of that vehicle that states "TOTAL LOSS CLAIM". Should that vehicle be later reconstructed, the plate or other permanent marker shall be inserted in the doorjamb of the reconstructed vehicle.

(b) Any motor vehicle up to and including six model years old damaged by collision or other occurrence, that is to be retitled in this State, shall be subject to

preliminary and final inspections by the Enforcement Section of the Division. For purposes of this subsection, the term 'six model years' shall be calculated by counting the model year of the vehicle's manufacture as the first model year and the current model year as the final model year.

These inspections serve as antitheft measures and do not certify the safety or road-worthiness of a vehicle.

(c) The Division shall not retitle a vehicle described in subsection (b) of this section that has not undergone the preliminary and final inspections required by that subsection.

(d) Any motor vehicle up to and including six model years old that has been inspected pursuant to subsection (b) of this section may be retitled with an unbranded title based upon a title application by the rebuilder with a supporting affidavit disclosing all of the following:

(1) The parts used or replaced.
(2) The major components replaced.
(3) The hours of labor and the hourly labor rate.
(4) The total cost of repair.

The unbranded title shall be issued only if the cost of repairs, including parts and labor, does not exceed seventy-five percent (75%) of its fair market retail value.

(e) Any motor vehicle more than six model years old damaged by collision or other occurrence that is to be retitled by the State may be retitled, without inspection, with an unbranded title based upon a title application by the rebuilder with a supporting affidavit disclosing all of the following:

(1) The parts used or replaced.
(2) The major components replaced.
(3) The hours of labor and the hourly labor rate.
(4) The total cost of repair.

The unbranded title shall be issued only if the cost of repairs, including parts and labor, does not exceed seventy-five percent (75%) of its fair market retail value.

(f) The Division shall maintain the affidavits required by this section and make them available for review and copying by persons researching the salvage and repair history of the vehicle.

(g) Any motor vehicle that has been branded in another state shall be branded with the nearest applicable brand specified in this section, except that no junk vehicle or vehicle that has been branded junk in another state shall be titled or registered.

(h) A branded title for a salvage motor vehicle damaged by collision or other occurrence shall be issued if the cost of repairs, including parts and labor, exceeds seventy-five percent (75%) of its fair market retail value.

(i) Once the Division has issued a branded title for a motor vehicle all subsequent titles for that motor vehicle shall continue to reflect the branding.

(j) The Division shall prepare necessary forms and may adopt rules required to carry out the provisions of this Part."

SECTION 2. G.S. 20-71.4 reads as rewritten:

"**§ 20-71.4. Failure to disclose damage to a vehicle shall be a misdemeanor.**

(a) It shall be unlawful ~~and constitute a Class 2 misdemeanor~~ for any transferor who ~~knows or reasonably should know~~ has actual knowledge that:

(1) A motor vehicle up to and including five model years old has been involved in a collision or other occurrence to the extent that the cost of repairing that vehicle exceeds twenty-five percent (25%) of its fair market retail value at the time of the ~~damage;~~ collision or other occurrence, or

(2) The motor vehicle is, or was, a flood vehicle, a reconstructed vehicle, or a salvage motor vehicle to fail to disclose that fact in writing to the transferee prior to the transfer of the vehicle. For purposes of this subsection, the term 'five model years' shall be calculated by counting the model year of the vehicle's manufacture as the first model year and the current model year as the final model year. Failure to disclose any of the above information within the actual knowledge of the transferor will also result in civil liability under G.S. 20-348. The Commissioner may prepare forms to carry out the provisions of this section.

(b) It shall be unlawful for any person to remove the title or supporting documents to any motor vehicle from the State of North Carolina with the intent to conceal damage (or damage which has been repaired) occurring as a result of a collision or other occurrence.

(c) It shall be unlawful for any person to remove, tamper with, alter, or conceal the 'TOTAL LOSS CLAIM' metal plate or other permanent marker that is affixed to the door of any total loss claim vehicle. It shall be unlawful for any person to reconstruct a total loss claim vehicle and not include or affix a 'TOTAL LOSS CLAIM' metal plate or other permanent marker to the doorjamb of the rebuilt vehicle.

(d) Violation of this ~~statute~~ section shall constitute a Class 2 misdemeanor."

SECTION 3. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-136.2. Air bag installation.**

It shall be unlawful for any person, firm, or corporation to knowingly install or reinstall any object in lieu of an air bag, other than an air bag that was designed in accordance with federal safety regulations for the make, model, and year of vehicle, as part of a vehicle inflation restraint system. Any person, firm, or corporation violating this section shall be guilty of a Class 1 misdemeanor."

SECTION 4. G.S. 20-305.1(e) reads as rewritten:

"(e) Damage/Repair Disclosure. – Notwithstanding the provisions of subdivision (d)(4) of this section and in supplementation thereof, a new motor vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle prior to entering into a sales contract any damage and repair to the new motor vehicle if the damage exceeds five percent (5%) of the manufacturer's suggested retail price as calculated at the rate of the dealer's authorized warranty rate for labor and parts.

(1) A new motor vehicle dealer is not required to disclose to a purchaser that any ~~glass, tires or bumper of a new motor vehicle was damaged at any time~~ damage of any nature occurred to a new motor vehicle at any

time if the total cost of all repairs fails to exceed five percent (5%) of the manufacturer's suggested retail price as calculated at the time the repairs were made based upon the dealer's authorized warranty rate for labor and parts, and ~~if~~ the damaged item has been replaced with original or comparable equipment.

(2) If disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract or have or file any cause of action or claim against the dealer or manufacturer for breach of contract, breach of warranty, fraud, concealment, unfair and deceptive acts or practices, or otherwise due solely to the fact that the new motor vehicle was damaged and repaired prior to completion of the sale.

(3) For purposes of this section, "manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer which is not included within the retail price suggested by the manufacturer for the new motor vehicle."

SECTION 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 559

Short Title:	Clarify MV Dealer Franchise Laws.	(Public)
Sponsors:	Senators Hoyle, Swindell, and Berger.	
Referred to:	Commerce.	

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-286(10) reads as rewritten:

"**§ 20-286. Definitions.**

The following definitions apply in this Article:

...

(10) Motor vehicle. – Any motor propelled vehicle, trailer or semi trailer, required to be registered under the laws of this State.

a. "New motor vehicle" means a motor vehicle which has ~~never been the subject of a sale other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise.~~either:

1. Never been the subject of a sale other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise; or

2. Whose odometer mileage is 1,000 miles or less.

For purposes of this Article, a motor vehicle that has previously been the subject of a sale, whether the sale was conditional or unconditional, whether or not documents transferring title to the vehicle were executed and submitted to the Division, or whether or not the title to the vehicle was transferred, may nonetheless be considered new and represented and sold by a new motor vehicle dealer to the public as such, as long as the vehicle's odometer mileage does not exceed 1,000 miles.

b. "Used motor vehicle" means a motor vehicle other than described in paragraph (10)a above."

SECTION 2. G.S. 20-286(13b) reads as rewritten:

"**§ 20-286. Definitions.**

The following definitions apply in this Article:

...

(13b) Relevant market area or trade area. – The area within a radius of 20 miles around an existing dealer or the area of responsibility defined in the franchise, whichever is greater; except that, where a manufacturer is seeking to establish an additional new motor vehicle dealer the relevant market area shall be as follows:

a. If the population in an area within a radius of 10 miles around the proposed site is 250,000 or more, the relevant market area shall be that area within the 10 mile ~~radius;~~ radius, together with the area of responsibility defined in the franchise of any existing same line-make dealer whose area of responsibility wholly or partially falls within the 10 mile radius; or

b. If the population in an area within a radius of 10 miles around the proposed site is less than 250,000, but the population in an area within a radius of 15 miles around the proposed site is 150,000 or more, the relevant market area shall be that area within the 15 mile ~~radius;~~ radius, together with the area of responsibility defined in the franchise of any existing same line-make dealer whose area of responsibility wholly or partially falls within the 15 mile radius; or

c. Except as defined in subparts a. and b., the relevant market area shall be the area within a radius of 20 miles around an existing ~~dealer.~~dealer, together with the area of responsibility defined in the franchise of any existing same line-make dealer whose area of responsibility wholly or partially falls within the 20 mile radius;

In determining population for this definition the most recent census by the U.S. Bureau of the Census or the most recent population update either from Claritas Inc. or other similar recognized source shall be accumulated for all census tracts either wholly or partially within the relevant market area. In accumulating population for this definition, block group and block level data shall be used to apportion the population of census tracts which are only partially within the relevant market area so that population outside of the applicable radius is not included in the count."

SECTION 3. Article 12 of Chapter 20 is amended by adding a new section to read:

"**§ 20-293. Supplemental temporary license for sale of antique and specialty vehicles.**

Any dealer license as a motor vehicle dealer under this Article may apply to the Commissioner and receive, at no additional charge, a supplemental temporary license authorizing the off-premises sales of antique motor vehicles and specialty motor

vehicles for a period not to exceed 10 consecutive calendar days. To obtain a temporary supplemental license for the off-premises sale of antique motor vehicles and specialty motor vehicles the applicant shall:

(1) Be licensed as a motor vehicle dealer under this Article.
(2) Notify the applicable local office of the Division of the specific dates and location for which the license is requested.
(3) Display a sign at the licensed location clearly identifying the dealer.
(4) Keep and maintain the records required for the sale of motor vehicles under this Article.
(5) Provide staff to work at the temporary location for the duration of the off-premises sale.
(6) Meet any local government permitting requirements.
(7) Have written permission from the property owner to sell at the location.

For purposes of this section, the term 'antique motor vehicle' shall mean any motor vehicle for private use manufactured at least 25 years prior to the current model year, and the term 'specialty motor vehicle' shall mean any mode or series of motor vehicle for private use manufactured at least three years prior to the current model year of which no more than 5,000 vehicles were sold within the United States during the model year the vehicle was manufactured.

This section does not apply to a nonselling motor vehicle show or public display of new motor vehicles."

SECTION 4. G.S. 20-305(5) reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the

proposed new motor vehicle dealer until the Commissioner has held a hearing and has determined that there is good cause for permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle. If this sub-subdivision is applicable, only dealers trading in the same line-make of vehicle that are located within the 10-mile radius shall be entitled to notice from the manufacturer and have the protest rights afforded under this section; or
2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership if the ~~franchise~~ line make has been operating on a regular basis from the existing site for a minimum of three years immediately preceding the ~~relocation;~~ relocation and the relocation not be at a site within five miles of another licensed new motor vehicle dealer for the same line make of motor vehicle; or
4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market ~~area.~~area; or
5. To the relocation of an existing new motor vehicle dealer within four miles of the existing site of the new motor vehicle dealership if the line make has been operating on a regular basis from the existing site for a minimum of 50 years immediately preceding the relocation and the relocation not be at a site within 4.5 miles of another licensed new motor vehicle dealer for the same line make of motor vehicle.

b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:

1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
3. Effect on the consuming public in the relevant market area;
4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; ~~and~~
7. The effect on the relocating dealer of a denial of its relocation into the relevant market ~~area.~~area; and
8. Whether an existing dealer in whose market the proposed additional new motor vehicle dealer would be established, has, at the request, encouragement, or with the approval of the franchiser: (i) acquired property for the construction or replacement facility; (ii) constructed a replacement facility; (iii) renovated, remodeled, or constructed an addition to an existing facility; or (iv) by any other means increased the dealer's investment in facilities for the purpose of improving the representation of the manufacturer's products or better serving the consuming public.

c. The Commissioner shall try to conduct the hearing and render his final determination if possible, within 180 days after a protest is filed.

d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing

dealership, the dealer seeking to relocate has the burden of proof under this section.

f. If the Commissioner determines, following a hearing, that good cause exists for permitting the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section. If the Commissioner fails to determine that good cause exists for permitting the proposed additional or relocated motor vehicle dealership, the manufacturer seeking the proposed additional dealership or dealer seeking to relocate may not again provide notice of its intention or otherwise attempt to establish an additional dealership or relocate to any location within 10 miles of the site of the original proposed additional dealership or relocation site for a minimum of three years from the date of the Commissioner's determination.

g. For purposes of this subdivision, the addition, creation, or operation of a "satellite" or other facility, not physically part of or contiguous to an existing licensed new motor vehicle dealer, whether or not owned or operated by a person or other entity holding a franchise as defined by G.S. 20-286(8a), at which warranty service work authorized or reimbursed by a manufacturer is performed or at which new motor vehicles are offered for sale to the public, shall be considered an additional new motor vehicle dealer requiring a showing of good cause, prior notification to existing new motor vehicle dealers of the same line make of vehicle within the relevant market area by the manufacturer and the opportunity for a hearing before the Commissioner as provided in this subdivision.

h. Notwithstanding the terms of any contract or agreement, and not waiving or excusing the obligation of a manufacturer to provide timely notice of termination as provided in this subdivision, the announced decision or determination of the manufacturer to discontinue or phase out a product line in its entirety or to discontinue or phase out any portion for a product line substantial enough that the discontinued or scaled down franchise held by its franchisees would either have no

significant long-term value or be unmarketable, shall constitute a termination of the franchise under this subdivision effective as of the date the decision or determination is communicated by the manufacturer to its franchisees or otherwise becomes public knowledge."

SECTION 5. G.S. 20-305(38) reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(38) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to assign or change a franchised new motor vehicle dealer's area of responsibility under the franchise arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's ~~market.~~ market, and without first having provided the affected dealer with prior notice of the proposed change in the dealer's area of responsibility and a detailed description of the change in writing by registered or certified mail, return receipt requested. Unless and until the Commissioner has, pursuant to G.S. 20-305(5), determined that good cause exists for the establishment of an additional dealer at a location such that there would be one or more existing dealers trading in the same line make of motor vehicle within the additional dealer's relevant market area, it shall be unlawful for a manufacturer, factory branch, distributor, or distributor branch to change any existing dealer's area of responsibility for the purpose of justifying the establishment of an additional dealer. A franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer has entered into a franchise has violated this subdivision may file a petition before the Commissioner as provided in G.S. 20-301(b) contesting the franchised new motor vehicle dealer's assigned area of responsibility. Upon the filing of a petition, the manufacturer shall not change, put into effect, use, or rely on those portions of the petitioning dealer's area of responsibility contested by the dealer, until after a hearing has been held and a determination rendered on the merits of the petition by the Commissioner. At the hearing before the Commissioner, the affected manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving that all portions of its current or proposed area of responsibility for the petitioning franchised new motor vehicle

dealer are reasonable in light of the present or projected future pattern of motor vehicle sales and registrations within the franchised new motor vehicle dealer's market. If a protest is or has been filed under G.S. 20-305(5) and the franchised new motor vehicle dealer's area of responsibility is included in the relevant market area under the protest, any protest filed under this subdivision shall be consolidated with that protest for hearing and joint disposition of all of the protests."

SECTION 6. G.S. 20-305(39) reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(39) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to require, coerce, or attempt to coerce any of its franchised motor vehicle dealers in this State to purchase or lease one or more signs displaying the name of the manufacturer or franchised motor vehicle dealer upon unreasonable ~~and~~ or onerous terms or conditions or if installation of the additional signage would violate local signage or zoning laws to which the franchised motor vehicle dealer is subject. Any term, provision, or condition of any agreement, franchise, waiver, novation, or any other written instrument which is in violation of this subdivision shall be deemed null and void and without force and effect."

SECTION 7. G.S. 20-305 is amended by adding a new subdivision to read:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(40) Notwithstanding the terms, provision, or conditions of any agreement or franchise or other terms or provisions of any novation, waiver, or other written instrument, to require, coerce, or attempt to coerce any dealer to floor plan any of the dealer's inventory, finance the sale or lease of any motor vehicles purchased or leased by any of the dealer's customers, or finance the acquisition, construction, or renovation of any of the dealer's property or facilities, by or through any financial

source or sources designated by the manufacturer, factory branch, distributor, or distributor branch, including but not limited to any financial source or sources that is or are directly, or indirectly, owned, operated, or controlled by the manufacturer, factory branch, distributor, or distributor branch."

SECTION 8. G.S. 20-305.1(b1) reads as rewritten:

"(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim. A manufacturer or distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided reasonably sufficient documentation that the dealer:

(1) Made a good faith attempt to perform the work in compliance with the written policies and procedures of the manufacturer; and

(2) Actually performed the work.

A manufacturer may further not charge a dealer back subsequent to the payment of the claim unless a representative of the manufacturer has met in person at the dealership with an officer or employee of the dealer designated by the dealer and explained in detail the basis for each of the proposed charge backs and thereafter given the dealer's representative a reasonable opportunity at the meeting to explain the dealer's position relating to each of the proposed charge backs. In the event the dealer was selected for audit or review on the basis that some or all of the dealer's claims were viewed as excessive in comparison to average, mean, or aggregate data accumulated by the manufacturer, or in relation to the claims submitted by a group of other franchisees of the manufacturer, the manufacturer shall, at or prior to the meeting with the dealer's representative, provide the dealer with a written statement containing:

(1) All grounds upon which the dealer was selected for audit or review.

(2) The average, mean, or aggregate data upon which the dealer was selected for audit or review and a comparison of that data with relevant data from the dealer.

(3) The name and location of all dealers comprising any group of dealers against whom the dealer's claims were compared in selecting the dealer for audit or review."

SECTION 9. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 10. This act is effective when it becomes law.

SENATE BILL 559:
Clarify MV Dealer Franchise Laws

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senators Hoyle, Swindell, and Berger
Date:	April 16, 2003		
Version:	Proposed Committee Substitute S559-CSSU-7[v.4]	**Summary by:**	Wendy Graf Ray Committee Counsel

SUMMARY: ***Senate Bill 559 would amend the law regarding motor vehicle dealers and manufacturers.***

BILL ANALYSIS: Article 12 of Chapter 20 of the General Statutes sets out laws regulating motor vehicle distribution in North Carolina. Senate Bill 559 would amend Article 12 in the following ways:

Temporary license for sale of antique and specialty vehicles. **Section 1** would add a new section to Article 12 that would allow a licensed motor vehicle dealer to get a supplemental temporary license authorizing the off-premises sale of antique and specialty vehicles for a period not to exceed 10 days. There would be no additional charge for the license, and the section would not apply to nonselling motor vehicle shows or public displays of new vehicles.

The section would define "antique motor vehicle" as a vehicle for private use manufactured at least 25 years prior to the current model year, and it would define "specialty motor vehicle" as any model or series of motor vehicle for private use manufactured at least three years prior to the current model year of which no more than 5,000 were sold in the U.S. during the model year it was manufactured.

Changes in area of responsibility under franchise. G.S. 20-305(38) makes it unlawful for a manufacturer to arbitrarily change a dealer's area of responsibility under a franchise. If a dealer believes the manufacturer has violated this subdivision, the dealer may file a petition for a hearing before the Commissioner. **Section 2** would additionally require the manufacturer to provide the dealer with written notice of the proposed change by registered or certified mail.

Signs. **Section 3** would amend G.S. 20-305(39), which makes it unlawful for a manufacturer to require a dealer to purchase or lease signs displaying the name of the manufacturer or dealer upon unreasonable and onerous terms, so that it would read "unreasonable **or** onerous".

Financing through sources designated by manufacturer. **Section 4** would add a subdivision to G.S. 20-305 making it unlawful for a manufacturer to require a dealer to floor plan inventory or finance the acquisition, construction, or renovation of the dealer's facilities, by or through any financial sources designated by the manufacturer.

Payments of claims charged back to dealer. G.S. 20-305.1(b1) sets out procedures for dealers to be compensated by the manufacturer for delivery, preparation, warranty and recall work. A claim that has been approved and paid may not be charged back to the dealer unless the manufacturer can show that the claim was fraudulent, the repairs were not properly made or were unnecessary, or the dealer failed to reasonably substantiate the claim.

Section 5 would amend the subsection to also prohibit the manufacturer from charging the dealer back for payments of claims unless a representative of the manufacturer is sent to the dealership to meet with a representative of the dealer in person, or contacts the representative of the dealer by telephone, to discuss each of the proposed charge backs. In addition, if the dealer was selected for audit because the dealer's

claims generally exceeded the average, this section would also require the manufacturer to provide the dealer with a written statement containing the basis or methodology upon which the dealer was selected for audit.

Severability. **Section 6** would provide that, if any provision of this act is found to be invalid, the remainder of the act would still be valid to the extent that it could be given effect without the invalid provisions.

EFFECTIVE DATE: The act would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 559
PROPOSED COMMITTEE SUBSTITUTE S559-CSSU-7 [v.4]

4/15/2003 3:44:41 PM

Short Title: Clarify MV Dealer Franchise Laws. (Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 12 of Chapter 20 is amended by adding a new section to read:

"**§ 20-293. Supplemental temporary license for sale of antique and specialty vehicles.**

Any dealer licensed as a motor vehicle dealer under this Article may apply to the Commissioner and receive, at no additional charge, a supplemental temporary license authorizing the off-premises sales of antique motor vehicles and specialty motor vehicles for a period not to exceed 10 consecutive calendar days. To obtain a temporary supplemental license for the off-premises sale of antique motor vehicles and specialty motor vehicles the applicant shall:

(1) Be licensed as a motor vehicle dealer under this Article.

(2) Notify the applicable local office of the Division of the specific dates and location for which the license is requested.

(3) Display a sign at the licensed location clearly identifying the dealer.

(4) Keep and maintain the records required for the sale of motor vehicles under this Article.

(5) Provide staff to work at the temporary location for the duration of the off-premises sale.

(6) Meet any local government permitting requirements.

(7) Have written permission from the property owner to sell at the location.

For purposes of this section, the term 'antique motor vehicle' shall mean any motor vehicle for private use manufactured at least 25 years prior to the current model year, and the term 'specialty motor vehicle' shall mean any model or series of motor vehicle for private use manufactured at least three years prior to the current model year of

which no more than 5,000 vehicles were sold within the United States during the model year the vehicle was manufactured.

This section does not apply to a nonselling motor vehicle show or public display of new motor vehicles."

SECTION 2. G.S. 20-305(38) reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(38) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to assign or change a franchised new motor vehicle dealer's area of responsibility under the franchise arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's ~~market.~~ market, and without having provided the affected dealer with written notice of the change in the dealer's area of responsibility and a detailed description of the change in writing by registered or certified mail, return receipt requested. A franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer has entered into a franchise has violated this subdivision may file a petition before the Commissioner as provided in G.S. 20-301(b) contesting the franchised new motor vehicle dealer's assigned area of responsibility. At the hearing before the Commissioner, the affected manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving that all portions of its current or proposed area of responsibility for the petitioning franchised new motor vehicle dealer are reasonable in light of the present or projected future pattern of motor vehicle sales and registrations within the franchised new motor vehicle dealer's market. If a protest is or has been filed under G.S. 20-305(5) and the franchised new motor vehicle dealer's area of responsibility is included in the relevant market area under the protest, any protest filed under this subdivision shall be consolidated with that protest for hearing and joint disposition of all of the protests."

SECTION 3. G.S. 20-305(39) reads as rewritten:

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It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(39) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to require, coerce, or attempt to coerce any of its franchised motor vehicle dealers in this State to purchase or lease one or more signs displaying the name of the manufacturer or franchised motor vehicle dealer upon unreasonable ~~and~~ or onerous terms or conditions or if installation of the additional signage would violate local signage or zoning laws to which the franchised motor vehicle dealer is subject. Any term, provision, or condition of any agreement, franchise, waiver, novation, or any other written instrument which is in violation of this subdivision shall be deemed null and void and without force and effect."

SECTION 4. G.S. 20-305 is amended by adding a new subdivision to read:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(40) Notwithstanding the terms, provision, or conditions of any agreement or franchise, to require any dealer to floor plan any of the dealer's inventory or finance the acquisition, construction, or renovation of any of the dealer's property or facilities by or through any financial source or sources designated by the manufacturer, factory branch, distributor, or distributor branch, including any financial source or sources that is or are directly, or indirectly, owned, operated, or controlled by the manufacturer, factory branch, distributor, or distributor branch."

SECTION 5. G.S. 20-305.1(b1) reads as rewritten:

"(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim. A manufacturer or distributor shall not deny

a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided reasonably sufficient documentation that the dealer:

(1) Made a good faith attempt to perform the work in compliance with the written policies and procedures of the manufacturer; and

(2) Actually performed the work.

A manufacturer may further not charge a dealer back subsequent to the payment of the claim unless a representative of the manufacturer has met in person at the dealership, or by telephone, with an officer or employee of the dealer designated by the dealer and explained in detail the basis for each of the proposed charge backs and thereafter given the dealer's representative a reasonable opportunity at the meeting, or during the telephone call, to explain the dealer's position relating to each of the proposed charge backs. In the event the dealer was selected for audit or review on the basis that some or all of the dealer's claims were viewed as excessive in comparison to average, mean, or aggregate data accumulated by the manufacturer, or in relation to claims submitted by a group of other franchisees of the manufacturer, the manufacturer shall, at or prior to the meeting or telephone call with the dealer's representative, provide the dealer with a written statement containing the basis or methodology upon which the dealer was selected for audit or review."

SECTION 6. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 7. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 559
PROPOSED COMMITTEE SUBSTITUTE S559-PCS35240-SU-7

Short Title: Clarify MV Dealer Franchise Laws. (Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

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The General Assembly of North Carolina enacts:

SECTION 1. Article 12 of Chapter 20 is amended by adding a new section to read:

"**§ 20-293. Supplemental temporary license for sale of antique and specialty vehicles.**

Any dealer licensed as a motor vehicle dealer under this Article may apply to the Commissioner and receive, at no additional charge, a supplemental temporary license authorizing the off-premises sales of antique motor vehicles and specialty motor vehicles for a period not to exceed 10 consecutive calendar days. To obtain a temporary supplemental license for the off-premises sale of antique motor vehicles and specialty motor vehicles the applicant shall:

(1) Be licensed as a motor vehicle dealer under this Article.

(2) Notify the applicable local office of the Division of the specific dates and location for which the license is requested.

(3) Display a sign at the licensed location clearly identifying the dealer.

(4) Keep and maintain the records required for the sale of motor vehicles under this Article.

(5) Provide staff to work at the temporary location for the duration of the off-premises sale.

(6) Meet any local government permitting requirements.

(7) Have written permission from the property owner to sell at the location.

For purposes of this section, the term 'antique motor vehicle' shall mean any motor vehicle for private use manufactured at least 25 years prior to the current model year, and the term 'specialty motor vehicle' shall mean any model or series of motor vehicle for private use manufactured at least three years prior to the current model year of

which no more than 5,000 vehicles were sold within the United States during the model year the vehicle was manufactured.

This section does not apply to a nonselling motor vehicle show or public display of new motor vehicles."

SECTION 2. G.S. 20-305(38) reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(38) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to assign or change a franchised new motor vehicle dealer's area of responsibility under the franchise arbitrarily or without due regard to the present or projected future pattern of motor vehicle sales and registrations within the dealer's ~~market.~~ market, and without having provided the affected dealer with written notice of the change in the dealer's area of responsibility and a detailed description of the change in writing by registered or certified mail, return receipt requested. A franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer has entered into a franchise has violated this subdivision may file a petition before the Commissioner as provided in G.S. 20-301(b) contesting the franchised new motor vehicle dealer's assigned area of responsibility. At the hearing before the Commissioner, the affected manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving that all portions of its current or proposed area of responsibility for the petitioning franchised new motor vehicle dealer are reasonable in light of the present or projected future pattern of motor vehicle sales and registrations within the franchised new motor vehicle dealer's market. If a protest is or has been filed under G.S. 20-305(5) and the franchised new motor vehicle dealer's area of responsibility is included in the relevant market area under the protest, any protest filed under this subdivision shall be consolidated with that protest for hearing and joint disposition of all of the protests."

SECTION 3. G.S. 20-305(39) reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(39) Notwithstanding the terms, provisions, or conditions of any agreement, franchise, novation, waiver, or other written instrument, to require, coerce, or attempt to coerce any of its franchised motor vehicle dealers in this State to purchase or lease one or more signs displaying the name of the manufacturer or franchised motor vehicle dealer upon unreasonable ~~and~~ or onerous terms or conditions or if installation of the additional signage would violate local signage or zoning laws to which the franchised motor vehicle dealer is subject. Any term, provision, or condition of any agreement, franchise, waiver, novation, or any other written instrument which is in violation of this subdivision shall be deemed null and void and without force and effect."

SECTION 4. G.S. 20-305 is amended by adding a new subdivision to read:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

...

(40) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require any dealer to floor plan any of the dealer's inventory or finance the acquisition, construction, or renovation of any of the dealer's property or facilities by or through any financial source or sources designated by the manufacturer, factory branch, distributor, or distributor branch, including any financial source or sources that is or are directly, or indirectly, owned, operated, or controlled by the manufacturer, factory branch, distributor, or distributor branch."

SECTION 5. G.S. 20-305.1(b1) reads as rewritten:

"(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim. A manufacturer or distributor shall not deny

a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided reasonably sufficient documentation that the dealer:

(1) Made a good faith attempt to perform the work in compliance with the written policies and procedures of the manufacturer; and

(2) Actually performed the work.

A manufacturer may further not charge a dealer back subsequent to the payment of the claim unless a representative of the manufacturer has met in person at the dealership, or by telephone, with an officer or employee of the dealer designated by the dealer and explained in detail the basis for each of the proposed charge backs and thereafter given the dealer's representative a reasonable opportunity at the meeting, or during the telephone call, to explain the dealer's position relating to each of the proposed charge backs. In the event the dealer was selected for audit or review on the basis that some or all of the dealer's claims were viewed as excessive in comparison to average, mean, or aggregate data accumulated by the manufacturer, or in relation to claims submitted by a group of other franchisees of the manufacturer, the manufacturer shall, at or prior to the meeting or telephone call with the dealer's representative, provide the dealer with a written statement containing the basis or methodology upon which the dealer was selected for audit or review."

SECTION 6. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 7. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 995

Short Title:	School Construction/Repair Flexibility.	(Public)
Sponsors:	Senators Garrou and Horton.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ALLOW FLEXIBILITY IN SCHOOL CONSTRUCTION AND REPAIR CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. Lease-purchase and installment purchase contracts. – A board of education may, as provided by this section, enter into installment-purchase contracts granting a purchase money security interest in the premises or a lease-purchase contract with private for-profit or nonprofit firms for the construction of schools to be used and operated by the board. The contract shall be for a term not to exceed 20 years.

An installment-purchase agreement or a lease-purchase agreement may not be entered into pursuant to this section unless the following conditions are met before the lease-purchase agreement is entered into: (i) the superintendent approves the execution and delivery of the lease-purchase or installment purchase agreement, and (ii) the attorney for the board of education approves the lease-purchase or installment purchase agreement and all other documentation related to it, including any leasehold deed of trust or trust agreement in connection with it. In determining whether to approve the lease-purchase or installment purchase agreement, the superintendent and attorney may consider any factors as they consider relevant in order to find and determine that all of the following conditions are met:

(1) The amount to be paid under the lease-purchase or installment purchase agreement is adequate and not excessive for the purpose of paying the cost of the projects.

(2) The sums to become due under the lease-purchase or installment purchase agreement are not excessive.

(3) The lease-purchase or installment purchase agreement can be entered into on terms desirable to the board of education.

(4) The lease-purchase or installment purchase agreement will not have an adverse effect on any scheduled or proposed sale of obligations of the county.

SECTION 2. A lease-purchase or installment purchase agreement under this act is a continuing contract for capital outlay as provided by G.S. 115C-411(c1) and shall be approved in accordance with the provisions of that section. A lease-purchase or installment purchase agreement under this act shall be awarded by competitive bids as set forth in G.S. 143-129.

SECTION 3. G.S. 143-129 is amended by adding a new subsection to read:

"(b1) Prequalified bidders; solicited bid list. – Notwithstanding the other subsections of this section, a board of education ("Board") may prequalify a limited number of contractors for a school facility construction, rebuilding, or renovation contract ("contract" and "project") and solicit bids from some or all of those prequalified contractors. The Board must attempt to prequalify and solicit sealed bids from at least five contractors and may not award a contract pursuant to this section unless it receives at least three bids from the group of prequalified contractors. The Board may prequalify only single prime contractors pursuant to this section.

The Board shall award the contract or contracts to the lowest responsible bidder or bidders, taking into consideration quality, performance, and the time specified in the bids for the performance of the project. Notwithstanding the first paragraph of this section, if the Board does not receive three or more proposals, it may again seek proposals for the project pursuant to this section and may award the contract to the lowest responsible bidder, even if only one proposal is received.

In prequalifying a contractor for purposes of this section, the Board may consider the contractor's relevant experience on the type of project to be bid, ability to meet the project schedule, financial strength, and the contractor's failure to perform satisfactorily on past projects or a current project. The Board's consideration of these factors shall be based upon objective information provided in the public record of the prequalification process. The Board must notify a disqualified bidder at least seven days prior to the opening of bids."

SECTION 4. G.S. 143-128(a1) is amended by adding a new subdivision to read:

"(6) Design-build contracting. – Notwithstanding G.S. 143-128, 143-129, and 143-132, the Board may use the design-build method of construction as follows:

a. The Board must seek to prequalify and solicit at least five design-build teams to bid on the project and must receive sealed proposals from at least three of those teams. The request for proposals must contain a design criteria package that defines the project scope, including preliminary design and performance specifications, in a manner sufficient to allow the bidders to respond. This package should be developed by an architect.

b. The Board shall interview at least three of the design-build teams that submit proposals. The Board shall award the contract to the best qualified team, taking into account the time of completion of the project and the cost of the project as the major factors.

c. Facilities constructed may be turnkey projects, including all materials, equipment, and supplies normally associated with school programs."

SECTION 5. Other methods. – Nothing in this act limits the Board's use of any method of contracting already authorized by law under Articles 3D and 8 of Chapter 143 of the General Statutes.

SECTION 6. Financing. – Schools constructed under this act may be financed with private activity bonds as authorized by law.

SECTION 7. Minority business participation. – G.S. 143-128.2 applies to the construction of projects authorized in this act.

SECTION 8. This act is effective when it becomes law.

SENATE BILL 955:
School Construction/Repair Flexibility

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Garrou
Date:	April 16, 2003	**Summary by:**	Kory J. Goldsmith
Version:	Proposed Committee Substitute S995-CSLC-17[v.4]		Committee Counsel

SUMMARY: ***SB955 would allow a county to solicit bids for school construction by using prequalified bidders. Many, but not all counties, are authorized to issue certificates of participation (COPS) in order to finance the construction of schools.***

CURRENT LAW: In 2001, the General Assembly expanded the public bidding procedures. State and local government may now bid construction and repair contracts under the following methods:

- Separate-Prime (also known as Multi-Prime) Contracting - portions of the work are bid by subcontractors
- Single-Prime Contracting – General contractors bid for the entire project
- Dual Bidding – bids are received from general contractors and subcontractors
- Construction Management at Risk – a construction manager contracts directly with subcontractors
- Alternative Contracting Methods – the public agency may apply to the State Building Commission to allow a different method of contracting.

BILL ANALYSIS: The bill would allow a county to contract on behalf of a local board of education to build a school using prequalified bidders. The prequalified bidders would have to be single prime contractors. The county could prequalify a limited number of contractors for school facility construction, remodeling or renovation projects and solicit bids from those prequalified contractors. The county would attempt to prequalify and solicit bids from at least 5 contractors. The county could not award the bid if less than 3 contractors submitted bids. However, if less than 3 bids are received, the county may seek proposals for the project and may award the contract to the lowest responsible bidder, even if only on e proposal is received.

The county would award the contract to the lowest responsible bidder or bidders.

When prequalifying a contractor, the count may consider the contractor's relevant experience, ability to meet the project schedule, financial strength, and the contractor's past failure to perform on projects.

The minority business participation requirements would apply to this method of contracting.

The act is effective when it becomes law.

S995-SMRC-001

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-16-03

S. B. No. 995 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE PCS 995-CSLC-17

Rep.) GARROU
Sen.)

moves to amend the bill on page 2, line 1

( ) WHICH CHANGES THE TITLE

by DELETING THE WORD "SECTION 4." AND SUBSTITUTING THE WORD "SECTION 2." AND BY RENUMBERING THE REMAINING SECTION NUMBERS ACCORDINGLY.

SIGNED Linda Garrou

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 995
PROPOSED COMMITTEE SUBSTITUTE S995-PCS35243-LC-17

Short Title: School Construction/Repair Flexibility. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ALLOW FLEXIBILITY IN SCHOOL CONSTRUCTION AND REPAIR CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-129 is amended by adding a new subsection to read:

"(b1) Prequalified Bidders; Solicited Bid List. – Notwithstanding the other subsections of this section, a county on behalf of a local board of education ("county") may prequalify a limited number of contractors for a school facility construction, rebuilding, or renovation contract ("contract" and "project") and solicit bids from some or all of those prequalified contractors. The county must attempt to prequalify and solicit sealed bids from at least five contractors and may not award a contract pursuant to this section unless it receives at least three bids from the group of prequalified contractors. The county may prequalify only single prime contractors pursuant to this section.

The county shall award the contract or contracts to the lowest responsible bidder or bidders, taking into consideration quality, performance, and the time specified in the bids for the performance of the project. Notwithstanding the first paragraph of this subsection, if the county does not receive three or more proposals, it may again seek proposals for the project pursuant to this section and may award the contract to the lowest responsible bidder, even if only one proposal is received.

In prequalifying a contractor for purposes of this section, the county may consider the contractor's relevant experience on the type of project to be bid, ability to meet the project schedule, financial strength, and the contractor's failure to perform satisfactorily on past projects or a current project. The county's consideration of these factors shall be based upon objective information provided in the public record of the prequalification process. The county must notify a disqualified bidder at least seven days prior to the opening of bids.

G.S. 143-128.2 applies to the construction of projects described in this subsection."

SECTION 2. G.S. 143-128(a1) is amended by adding a new subdivision to read:

"(6) Design-build contracting. – Notwithstanding G.S. 143-129, G.S. 143-132, and any other provision of this section, a county on behalf of a local board of education may use the design-build method of construction as follows:

a. The county must seek to prequalify and solicit at least five design-build teams to bid on the project and must receive sealed proposals from at least three of those teams. The request for proposals must contain a design criteria package that defines the project scope, including preliminary design and performance specifications, in a manner sufficient to allow the bidders to respond. This package should be developed by an architect.

b. The county shall interview at least three of the design-build teams that submit proposals. The county shall award the contract to the best qualified team, taking into account the time of completion of the project and the cost of the project as the major factors.

c. Facilities constructed may be turnkey projects, including all materials, equipment, and supplies normally associated with school programs.

d. G.S. 143-128.2 applies to the construction of projects described in this subdivision."

SECTION 3. Other Methods. – Nothing in this act limits the use of any method of contracting already authorized by law under Articles 3D and 8 of Chapter 143 of the General Statutes.

SECTION 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 521

Short Title:	Pyrotechnic Regulation Enhanced.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Commerce.	

March 25, 2003

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE REGULATION OF PYROTECHNIC DISPLAYS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-413 reads as rewritten:

"**§ 14-413. Permits for use at public exhibitions.**

(a) For the purpose of enforcing the provisions of this Article, the board of county commissioners of any county ~~is hereby empowered and authorized to~~ may issue permits for use in connection with the conduct of concerts or public exhibitions, such as fairs, carnivals, shows of all descriptions and public exhibitions, but only after satisfactory evidence is produced to the effect that said pyrotechnics will be used for the aforementioned purposes and none other. Provided that no such permit shall be required for a public exhibition authorized by The University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel Hill.

(b1) For any indoor use of pyrotechnics at a concert or public exhibition, the board of commissioners may not issue any permit unless the local fire marshal or the State Fire Marshal (or in the case of The University of North Carolina or the University of North Carolina at Chapel Hill it may not authorize such concert or public exhibition unless the State Fire Marshal) has certified that:

(1) Adequate fire suppression will be used at the site.

(2) The structure is safe for the use of such pyrotechnics with the type of fire suppression to be used.

(3) Adequate egress from the building is available based on the size of the expected crowd.

(b2) The requirements of subsection (b1) of this section also apply to any city authorized to grant pyrotechnic permits by local act and to the officer delegated the power to grant such permits by local act."

SECTION 2. G.S. 14-410 reads as rewritten:

"**§ 14-410. Manufacture, sale and use of pyrotechnics prohibited; exceptions; sale to persons under the age of 16 prohibited.**

(a) It shall be unlawful for any individual, firm, partnership or corporation to manufacture, purchase, sell, deal in, transport, possess, receive, advertise, use or cause to be discharged any pyrotechnics of any description whatsoever within the State of North Carolina: provided, however, that it shall be permissible for pyrotechnics to be exhibited, used or discharged at concerts or public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations: provided, further, that the use of said pyrotechnics in connection with public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations, shall be under supervision of experts who have previously secured written authority from the board of county commissioners of the county in which said pyrotechnics are to be exhibited, used or ~~discharged; provided, further, that such~~ discharged. ~~written~~ Written authority from the board of commissioners is not ~~required~~ required, however, for a concert or public exhibition authorized by The University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel ~~Hill; provided, further, that it~~ Hill, but such exhibition, use, or discharge of pyrotechnics shall be under supervision of experts who have previously secured written authority from The University of North Carolina or the University of North Carolina at Chapel Hill. Notwithstanding any provision of this section, it shall not be unlawful for a common carrier to receive, transport, and deliver pyrotechnics in the regular course of its business. The requirements of G.S. 14-413(b1) and G.S. 14-413(b2) apply to this section.

(b) Notwithstanding the provisions of G.S. 14-414, it shall be unlawful for any individual, firm, partnership, or corporation to sell pyrotechnics as defined in G.S. 14-414 (2), (3), (4)c., (5), or (6) to persons under the age of 16."

SECTION 3. G.S. 14-415 reads as rewritten:

"**§ 14-415. Violation made misdemeanor.**

Any person violating any of the provisions of this Article, except as otherwise specified in said Article, shall be guilty of a Class 2 misdemeanor. Violation of this Article at any indoor public exhibition of pyrotechnics is a Class 1 misdemeanor."

SECTION 4. Sections 1 and 2 of this act apply to any permits granted on or after the date this act becomes law. Section 3 of this act becomes effective July 1, 2003.

SENATE BILL 521:
Pyrotechnic Regulation Enhanced.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Rand
Date:	April 16, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 521 would clarify the requirements for the lawful use of pyrotechnics at concerts and public exhibitions by defining specific minimal safety considerations that must be taken into account by boards of county commissioners before pyrotechnic permits are issued.***

CURRENT LAW: Illegal pyrotechnics, as defined in G.S. 14-414 (attached), may not be discharged in the State except at public exhibitions under the supervision of experts when permitted by the board of county commissioners. Other than the determination by the commissioners that the discharge will be at a public exhibition under the supervision of experts, there are no other safety requirements set forth in the law, other than general fire codes. Violation of this law is punished as a Class 2 misdemeanor.

BILL ANALYSIS: Senate Bill 521 would add specific safety requirements that have to be met before the county commissioners can issue a permit for the indoor use of pyrotechnics and increases the criminal penalty for the discharge of pyrotechnics indoors in violation of the law.

Section 1 of the bill adds a new subsection to the authority of county commissioners to issue pyrotechnic discharge permits at public exhibitions. This section adds concerts to the list of public exhibitions where pyrotechnics may be lawfully discharged under permit. The section also adds a new subsection to the law to require that for indoor use of pyrotechnics at concerts or public exhibitions the fire marshall must first certify that:

- There are adequate fire suppression devices for use at the site.
- That the structure of the building is safe for the pyrotechnics that will be used in light of the fire suppression that will be employed.
- That the building has adequate egress based on the size of the expected crowd.

This section will also apply to any other authority that is authorized to issue pyrotechnic permits by a local act.

Section 2 makes conforming changes to G.S. 14-410 and clarifies that UNC, which is given special authority independent of county commissioners, is required to apply the same safety requirements for permitting purposes that county commissioners are otherwise required to apply, including the additional provisions added by Section 1 of the bill.

Section 3 makes it a Class 1 misdemeanor to violate the provisions of the law governing indoor pyrotechnic exhibitions. Otherwise, the punishment for all other violations remains a Class 2 misdemeanor.

EFFECTIVE DATE: Sections 1 and 2 of the bill apply to permits issued on or after the date the bill becomes law. Section 3 is effective July 1, 2003.

S521-SMRU-001

§ 14-414. Pyrotechnics defined; exceptions.

For the proper construction of the provisions of this Article, "pyrotechnics," as is herein used, shall be deemed to be and include any and all kinds of fireworks and explosives, which are used for exhibitions or amusement purposes: provided, however, that nothing herein contained shall prevent the manufacture, purchase, sale, transportation, and use of explosives or signaling flares used in the course of ordinary business or industry, or shells or cartridges used as ammunition in firearms. This Article shall not apply to the sale, use, or possession of the following:

(1) Explosive caps designed to be fired in toy pistols, provided that the explosive mixture of the explosive caps shall not exceed twenty-five hundredths (.25) of a gram for each cap.

(2) Snake and glow worms composed of pressed pellets of a pyrotechnic mixture that produce a large, snake-like ash when burning.

(3) Smoke devices consisting of a tube or sphere containing a pyrotechnic mixture that produces white or colored smoke.

(4) Trick noisemakers which produce a small report designed to surprise the user and which include:

a. A party popper, which is a small plastic or paper item containing not in excess of 16 milligrams of explosive mixture. A string protruding from the device is pulled to ignite the device, expelling paper streamers and producing a small report.

b. A string popper, which is a small tube containing not in excess of 16 milligrams of explosive mixture with string protruding from both ends. The strings are pulled to ignite the friction-sensitive mixture, producing a small report.

c. A snapper or drop pop, which is a small, paper-wrapped item containing no more than 16 milligrams of explosive mixture coated on small bits of sand. When dropped, the device produces a small report.

(5) Wire sparklers consisting of wire or stick coated with nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition. These items must not exceed 100 grams of mixture per item.

(6) Other sparkling devices which emit showers of sparks and sometimes a whistling or crackling effect when burning, do not detonate or explode, do not spin, are hand-held or ground-based, cannot propel themselves through the air, and contain not more than 75 grams of chemical compound per tube, or not more than a total of 200 grams if multiple tubes are used. (1947, c. 210, s. 5; 1955, c. 674, s. 1; 1993, c. 437.)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 521

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S521-ARU-4 [v.1]

Date 4/16/ ,2003

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Senator Rand

moves to amend the bill on page 2, lines 32 and 33,
by writing the lines to read:

"**SECTION 4.** Section 3 of this act becomes effective December 1, 2003 and applies to offenses committed on or after that date. The remainder of the bill is effective when it becomes law and applies to any permits granted on or after the effective date.".

SIGNED Tony Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 521
PROPOSED COMMITTEE SUBSTITUTE S521-PCS40022-RU-20

Short Title: Pyrotechnic Regulation Enhanced. (Public)

Sponsors:

Referred to:

March 25, 2003

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE REGULATION OF PYROTECHNIC DISPLAYS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-413 reads as rewritten:

"**§ 14-413. Permits for use at public exhibitions.**

(a) For the purpose of enforcing the provisions of this Article, the board of county commissioners of any county ~~is hereby empowered and authorized to~~ may issue permits for use in connection with the conduct of concerts or public exhibitions, such as fairs, carnivals, shows of all descriptions and public exhibitions, but only after satisfactory evidence is produced to the effect that said pyrotechnics will be used for the aforementioned purposes and none other. Provided that no such permit shall be required for a public exhibition authorized by The University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel Hill.

(b1) For any indoor use of pyrotechnics at a concert or public exhibition, the board of commissioners may not issue any permit unless the local fire marshal or the State Fire Marshal (or in the case of The University of North Carolina or the University of North Carolina at Chapel Hill it may not authorize such concert or public exhibition unless the State Fire Marshal) has certified that:

(1) Adequate fire suppression will be used at the site.

(2) The structure is safe for the use of such pyrotechnics with the type of fire suppression to be used.

(3) Adequate egress from the building is available based on the size of the expected crowd.

(b2) The requirements of subsection (b1) of this section also apply to any city authorized to grant pyrotechnic permits by local act and to the officer delegated the power to grant such permits by local act."

SECTION 2. G.S. 14-410 reads as rewritten:

"**§ 14-410. Manufacture, sale and use of pyrotechnics prohibited; exceptions; sale to persons under the age of 16 prohibited.**

(a) It shall be unlawful for any individual, firm, partnership or corporation to manufacture, purchase, sell, deal in, transport, possess, receive, advertise, use or cause to be discharged any pyrotechnics of any description whatsoever within the State of North Carolina: provided, however, that it shall be permissible for pyrotechnics to be exhibited, used or discharged at concerts or public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations: provided, further, that the use of said pyrotechnics in connection with public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations, shall be under supervision of experts who have previously secured written authority from the board of county commissioners of the county in which said pyrotechnics are to be exhibited, used or ~~discharged; provided, further, that such~~ discharged. ~~written~~ Written authority from the board of commissioners is not ~~required~~ required, however, for a concert or public exhibition authorized by The University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel ~~Hill; provided, further, that it~~ Hill, but such exhibition, use, or discharge of pyrotechnics shall be under supervision of experts who have previously secured written authority from The University of North Carolina or the University of North Carolina at Chapel Hill. Notwithstanding any provision of this section, it shall not be unlawful for a common carrier to receive, transport, and deliver pyrotechnics in the regular course of its business. The requirements of G.S. 14-413(b1) and G.S. 14-413(b2) apply to this section.

(b) Notwithstanding the provisions of G.S. 14-414, it shall be unlawful for any individual, firm, partnership, or corporation to sell pyrotechnics as defined in G.S. 14-414 (2), (3), (4)c., (5), or (6) to persons under the age of 16."

SECTION 3. G.S. 14-415 reads as rewritten:

"**§ 14-415. Violation made misdemeanor.**

Any person violating any of the provisions of this Article, except as otherwise specified in said Article, shall be guilty of a Class 2 misdemeanor. Violation of this Article at any indoor public exhibition of pyrotechnics is a Class 1 misdemeanor."

SECTION 4. Section 3 of this act becomes effective December 1, 2003, and applies to offenses committed on or after that date. The remainder of the bill is effective when it becomes law and applies to any permits granted on or after the effective date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 813

Short Title:	Controller's Fee.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT RELATING TO THE RECOMMENDATIONS OF THE GOVERNOR'S COMMISSION TO PROMOTE GOVERNMENT EFFICIENCY AND SAVINGS ON STATE SPENDING RELATING TO A FEE FOR THE STATEWIDE ACCOUNTS RECEIVABLE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-86.22(c) reads as rewritten:

"(c) Collection Techniques. – The State Controller, in conjunction with the Office of the Attorney General, shall establish policies and procedures to govern techniques for collection of accounts receivable. These techniques may include use of collection agencies, credit reporting bureaus, judicial remedies authorized by law, and administrative setoff by a reduction of an individual's tax refund pursuant to the Setoff Debt Collection Act, Chapter 105A of the General Statutes, or a reduction of another payment, other than payroll, due from the State to a person to reduce or eliminate an account receivable that the person owes the State.

No later than January 1, 1999, the State Controller shall negotiate a contract with a third party to perform an audit and collection process of inadvertent overpayments by State agencies to vendors as a result of pricing errors, neglected rebates and discounts, miscalculated freight charges, unclaimed refunds, erroneously paid excise taxes, and related errors. The third party shall be compensated only from funds recovered as a result of the audit. Savings realized in excess of costs shall be transferred from the agency to the Office of State Budget and Management and placed in a special reserve account for future direction by the General Assembly. Any disputed savings shall be settled by the State Controller. This paragraph does not apply to the purchase of medical services by State agencies or payments used to reimburse or otherwise pay for health care services."

SECTION 2. G.S. 147-86.22 is amended by adding a new subsection to read:

"(d) Fee. – A collection assistance fee is imposed on a past-due debt that remains unpaid 30 days or more after the fee notice required by this subsection is mailed to the debtor. In order to impose a collection assistance fee on a past-due debt, the agency must notify the debtor that the fee will be imposed if the past-due debt is not paid in full within 30 days after the date the fee notice was mailed to the debtor. The fee is collectible as part of the debt which will be transferred to the Department of Revenue for collection. The amount of the collection assistance fee is twenty percent (20%) of the amount of the past-due debt. If the Department of Revenue collects only part of the past-due debt, the collection assistance fee has priority over the debt. The fee is a receipt of the Department of Revenue and must be applied to the costs of collecting past-due debts. The proceeds of the fee must be credited to a special account within the Department of Revenue and may be expended only as provided in this subsection. The Department of Revenue may apply the proceeds of the fee to pay contractors for collecting debts under this subsection. The remaining proceeds of the fee may be spent only pursuant to appropriation by the General Assembly. The fee proceeds do not revert but remain in the special account until spent for the costs of collecting past-due debts."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 813: Controller's Fee.

BILL ANALYSIS

Committee:	.Senate Commerce	**Introduced by:**	Senator Rand
Date:	April 16, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 813 would authorize the Controller to approve the use of collection agencies to assistance in the collection of debts owed to the State. The bill allows the imposition of a collection assistance fee of 20% if a debt is more than 30 days past-due after the notice of this fee has been mailed to the debtor.***

CURRENT LAW: Under Article 6B of Chapter 147, the Statewide Accounts Receivable Program, the Controller is responsible for developing a statewide debt collection program for money owed to the State and to supervise debt collection efforts of State agencies responsible for collecting these debts. Currently the techniques the Controller may approve include the use of credit reporting bureaus, judicial remedies and administrative setoff on payments the State otherwise owes to the debtor, other than payroll.

BILL ANALYSIS: Section 1 adds collection agencies to the techniques the Controller can approve for debt collection purposes.

Section 2 authorizes a collection assistance fee of 20% of the amount past-due to be added to debts owed to the State that are more than 30 days past due and are not paid within 30 days of the date that notice is given by the State agency to the debtor that the 20% will be assessed if the debt is not paid within 30 days. Partial collections are first applied to the collection assistance fee. All fees collected are to be held in a special account in the Department of Revenue to pay the cost of collection agencies hired to assist with the debt collection.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 661

Short Title:	Health Care Information Privacy.	(Public)
Sponsors:	Senators Reeves; Clodfelter, Dalton, Garrou, Gulley, Hagan, Kinnaird, Lucas, Malone, Metcalf, and Rand.	
Referred to:	Commerce.	

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT HEALTH INFORMATION PRIVACY BY PROHIBITING USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR PURPOSES OF MARKETING WITHOUT WRITTEN AUTHORIZATION OF THE INDIVIDUAL, AND BY LIMITING THE USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION WITHOUT INDIVIDUAL AUTHORIZATION FOR CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding the following new Chapter to read:

"**Chapter 132A.**

"**Privacy of Health Information.**

"Article 1.

"Use or Disclosure of Protected Health Information.

"**§ 132A-1. Purpose.**

The purpose of this Article is to provide greater patient privacy protections regarding the use or disclosure of protected health information for marketing purposes than are provided under the Health Insurance Portability and Accountability Act and Privacy Standards, and regulations adopted thereunder.

"**§ 132A-2. Definitions.**

(a) Unless otherwise defined in this Article, each term used in this Article has the meaning and application assigned by the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) As used in this Article:

(1) 'Health Insurance Portability and Accountability Act and Privacy Standards' means the privacy requirements of the Administrative Simplification subtitle of the Health Insurance Portability Act of 1996

(Pub. L. 104-191) and the final rules adopted December 28, 2000, as modified August 14, 2002, and any subsequent amendments.

(2) 'Marketing' means to make a communication about a product or service to encourage recipients of the communication to purchase or use the product or service, but does not include communications made as part of the treatment of a patient for the purpose of furthering treatment unless the covered entity receives direct or indirect remuneration from a third party for making the communication.

"**§ 132A-3. Protection of private health information.**

(a) Except in accordance with subsection (b) of this section, a covered entity shall not:

(1) Disclose protected health information to any entity for marketing the products or services of the entity; or

(2) Use protected health information in its possession to provide marketing services to any entity.

(b) A covered entity may provide marketing services to a pharmaceutical company if the covered entity:

(1) Provides clear and conspicuous notice to the individual involved concerning its disclosure practices for all protected health information collected or created with regard to the individual; and

(2) Obtains the consent of the individual involved to use the information and that consent is manifested by an affirmative act in a written communication which only references and applies to the specific marketing purpose for which the information is to be used.

(c) Applicability. – This Article does not affect the validity of another law of this State that provides greater confidentiality for information made confidential by this Article.

"**§ 132A-4. Use or disclosure of protected health information for public health activities and purposes to persons subject to the jurisdiction of the Food and Drug Administration.**

A covered entity shall not use or disclose protected health information without the written consent of the individual who is the subject of the protected health information to persons subject to the jurisdiction of the Food and Drug Administration except for the following public health activities or purposes:

(1) To report adverse events (or similar reports with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations if the disclosure is made to the person required or directed to report the information to the Food and Drug Administration;

(2) To track products if the disclosure is made to a person required or directed by the Food and Drug Administration to track the product;

(3) To enable product recalls, repairs, or replacement (including locating and notifying individuals who have received products of product recalls, withdrawals, or other problems); or

(4) To conduct post-marketing surveillance to comply with requirements or at the direction of the Food and Drug Administration.

"**§ 132A-5. Enforcement.**

(a) Injunctive Relief. – The Attorney General of this State may institute an action for injunctive relief to restrain a violation of this Article.

(b) Civil Penalties. – In addition to the injunctive relief provided by this section, the Attorney General may institute an action for civil penalties against a covered entity for a violation of this Article. A civil penalty assessed under this section may not exceed three thousand dollars ($3,000) for each violation. If the court in which an action under this subsection is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed two hundred fifty thousand dollars ($250,000).

(c) Disciplinary Action. – In addition to the penalties prescribed under this section, a violation of this Article by an individual or facility that is licensed by an agency of this State is subject to investigation and disciplinary proceedings, including probation or suspension by the licensing agency. If the licensing agency finds evidence that the violations of this Article constitute a pattern or practice, the licensing agency may revoke the individual's or facility's license.

(d) Availability of Other Remedies. – This Article does not affect any right of a person under other law to bring a cause of action or otherwise seek relief with respect to conduct that is a violation of this Article."

SECTION 2. This act becomes effective January 1, 2004.

SENATE BILL 661:
Health Care Information Privacy

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Reeves
Date:	April 12, 2003	**Summary by:**	Kory J. Goldsmith
Version:	1st Edition		Committee Counsel

SUMMARY: ***SB661 more strictly regulates the "marketing" of protected health information than what will be allowed under federal law. The Health Insurance Portability and Accountability Act (HIPAA) is the federal law that regulates the marketing of private health information (PHI).***

BILL ANALYSIS: Like HIPAA, SB661 defines marketing as a communication about a product or service to encourage recipients to purchase or use the product or service. Also like HIPAA, marketing does not include communications made as part of the treatment of a patient. **Unlike** HIPAA, if the covered entity receives direct or indirect remuneration from a third party for making the communication, then even communications made as part of the treatment of a patient constitute marketing.

A covered entity is prohibited from:

- disclosing PHI to another entity for the purpose of marketing the products or services of the other entity; or
- using PHI in its possession to provide marketing services to another entity.

A covered entity may provide marketing services to a pharmaceutical company if the covered entity:

- provides clear and conspicuous notice regarding its disclosure practices; and
- obtains prior written consent.

A covered entity may provide PHI to an entity under the jurisdiction of the Food and Drug Administration (pharmaceutical researchers) for the following purposes:

- to report adverse effects, product defects, or biological product deviations
- to tract products provided there is disclosure to person appointed or required to do the tracking by the FDA
- for product recalls, repairs, and replacement
- to conduct post-marketing surveillance to comply with FDA requirements.

A violation of the law could result in injunctive relief and a civil penalty not to exceed $3,000 for each violation. Where a court finds a pattern or practice of violations, it may impose a penalty up to $250,000. An individual may also be subject to investigation and disciplinary proceedings, and license suspension or revocation by the appropriate licensing agency.

CURRENT (FEDERAL) LAW: The general rule under HIPAA is that covered entities must obtain an individual's authorization before using or disclosing protected health information ("PHI") for marketing purposes. "Marketing" is a communication about a product or service the purpose of which is to encourage recipients of the communication to purchase or use the product or service. Activities that constitute treatment, payment, and health care operations are not marketing. There are three exceptions to the definition of marketing:

- Communications made by a covered entity for the purpose of describing its network, the scope of services it provides, and the services for which it pays.

- Communications tailored by the provider to the circumstances of a particular individual for treatment purposes or furthering the individual's care. Includes activities such as referrals, prescriptions, recommendations, and other communications that address how a product or service may relate to the individuals health.

- Communications made by the provider or health plan to an individual in the course of managing the treatment of that individual or for recommending alternative treatments, therapies, providers, or settings of care. Permits covered entities to discuss products or services in the course of managing an individual's care or providing treatment.

Even if a situation falls within the definition of marketing, there are three exceptions to the requirement that a covered entity first obtain the individual's authorization before using the PHI for marketing purposes. These are:

- Face-to-face communications with the individual, for example, a physician tells her patient about a product or service during the office visit.

- Communications involving products or services of "nominal value". Nominal value is not defined in the rule, but is thought to mean something like a coupon, rebate, or toothbrush.

- Communications involving health-related products or services of the covered entity or of a third party, provided that the communication:

    - identifies the covered entity as the "marketer"

    - reveals whether the covered entity receives any remuneration from a third-party for making the communication;

    - tells the individual how to opt-out of future communications; and

    - if PHI was used to target an individual about a particular product or service, discloses why the individual was chosen and how the product or service could benefit him/her.

        - PLUS - The covered entity determines, prior to making the targeted communication, that the product or service may be beneficial to the health of the type or class of individual targeted.

The act is effective when it becomes law.

S661-SMRC-001

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 661

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S661-ARM-13 [v.2]

Date _____,2003

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Senator _____

moves to amend the bill on page 2, line 5 by deleting the word "made" and inserting the following:
made; (i); and on page 2, line 7, by inserting the following after the word "treatment":

"or (ii) communications by a health plan to its members including communications about the plan of benefits and replacements or enhancements to the benefit plan, the network of providers, and value added services available to its members,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 750

Short Title:	Increase Permit Limit for Breweries.	(Public)
Sponsors:	Senator Hagan.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CEILING THAT A SMALL BREWERY MAY PRODUCE WITHOUT BEING REQUIRED TO GO THROUGH A MALT BEVERAGE DISTRIBUTOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1104 reads as rewritten:

"**§ 18B-1104. Authorization of brewery permit.**

The holder of a brewery permit may:

(1) Manufacture malt beverages;

(2) Purchase malt, hops and other ingredients used in the manufacture of malt beverages;

(3) Sell, deliver and ship malt beverages in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that malt beverages may be sold to exporters and nonresident wholesalers only when the purchase is not for resale in this State;

(4) Receive malt beverages manufactured by the permittee in some other state for transshipment to dealers in other states;

(5) Furnish or sell marketable malt beverage products, or packages which do not conform to the manufacturer's marketing standards, if State taxes have been or will be paid, to its employees for the use of the employees or their families and guests in this State;

(6) Give its products to its employees and guests for consumption on its premises;

(7) In areas where the sale is legal, sell the brewery's malt beverages at the brewery upon receiving a permit under G.S. 18B-1001(1). The brewery also may obtain a malt beverage wholesaler permit to sell, deliver, and ship at wholesale only malt beverages manufactured by the brewery. The authorization of this subdivision applies to a brewery

that sells, to consumers at the brewery, to wholesalers, to retailers, and to exporters, fewer than ~~310,000 gallons~~ 100,000 barrels of malt beverages produced by it per year.

A sale or gift under subdivision (5) or (6) shall not be considered a retail or wholesale sale under the ABC laws."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 750:
Increase Permit Limit for Breweries.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Hagan
Date:	April 15, 2003	**Summary by:**	O. Walker Reagan,
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 750 would increase the amount of beer a holder of a brewery permit, who sells malt beverages to consumers at the brewery, can sell to consumers at the brewery, to wholesalers, retailers and importers from fewer than 310,000 gallons to fewer than 100,000 barrels.***

CURRENT LAW: Currently a holder of a brewery permit may, where the sale of malt beverages is generally permitted, sell malt beverages at the brewery upon receiving an on-premises malt beverage permit. The brewery can also obtain a wholesale malt beverage permit to sell, deliver and ship at wholesale only malt beverages manufactured by the brewery. These activities are permitted only so long as the brewery sells less than 310,000 gallons of malt beverages per year.

BILL ANALYSIS: The bill would increase the annual limit that a brewery can sell under this arrangement from 310,000 gallons (approximately 9841 barrels) to 100,000 barrels (3,150,000 gallons). The official U.S. definition of a barrel for beer and wine purposes is 31.5 gallons.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 16, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Colleen Kochanek	Hafer & Caldwell, P.A.
[signature]	[illegible]
[signature]	NC Auto Dealers
[signature]	Lobbyist NCAIA
Susan Valauri	Nationwide
Brian Shank	AstraZeneca
Glenn Wells	Hoffman-La Roche
Amy Dobson	NC State Watch
John Burdick	AstraZeneca
Mark Leggett	Red Oak Brewery
[signature]	NC [illegible]

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 16, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Crawford	AIA North Carolina
Evelyn Hawthorne	DCR
Steve Woodson	NC Farm Bureau
John Polumbo	AT&T
Barbara Conklin	MF&S
J. Edwards	DMV
DIANE JOHNSON	DMV
CB NOBLE JR	NT
FRANK W. FOLGER	NC DOT
Rogers Bone	Bone + Assoc.
Tim Willyard	SPC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 16, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ben Hackaday	HMC
Gary Salamido	GSK
	GSK
Chad W. Essick	Edmisten + Webb
Rufus L. Edmisten	Edmisten & Webb
Karen Brown	NC DOC
Gary Harris	NCPMA
Doug Howey	NCPMA
Eddie Caldwell	Hafer & Caldwell
Chris Nichols	Hunton + Williams
DAVID BARNES	P+S

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 16, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cindi Hobbs	observer
Greg McLeod	DOJ
[illegible]	DOJ
Butch Cunningham	NCSDA
[illegible]	NYDC
[illegible]	HPDesa
[illegible]	[illegible]
[illegible]	NC AHP
[illegible]	NCBIO
[illegible]	NC Justice Ctr.
[illegible]	NCSBA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 16, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jon Carr	Forte Price
John McMillan	MFR
Dean Plunkett	NC Beer & Wine.
Ann Lore	DVHS
Dan Sui	CMC
Dick Carlton	Merck + Co., Inc.
John Rust	NCFPC
Sarah Toner	Sen. Kerr
Tom Sri	NCRMA
Stephen Simpson	NCAR
C.N. Brown	Charlotte Police

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 16, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Roy Williams	UNC
Bill Brooks	NCFPC

AGENDA

SENATE COMMERCE COMMITTEE
Thursday, April 17, 2003 at 9:00 AM
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Bills to be Considered

SB 290	Clarify Certain Building Code Requirement.	Senator Dorsett
SB 590	Moratorium on Soft Drink Contracts/Schools.	Senator Kinnaird
SB 620	Purchasing Flexibility for Schools.	Senator Dalton
SB 750	Increase Permit Limit for Breweries.	Senator Hagan
SB 758	More Sm. Employer Health Ins. Available.	Senator Rand
SB 769	Beach Plan Homeowners Policy Rate Setting.	Senator Thomas
SB 771	Credit Scoring Limitation.	Senator Thomas
SB 846	Solar Energy Systems.	Senator Gulley

III. Other Business

IV. Adjournment

SENATE COMMERCE COMMITTEE
Thursday, April 17, 2003 at 9:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:00 a.m. on Thursday, April 17, 2003, in Room 1027 of the Legislative Building. Seventeen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced the pages: Tim Forson of Dallas, sponsored by Senator Hoyle; and Jonas Pinkney of Charlotte, sponsored by Senator Pittenger.

Senator Katie Dorsett was introduced to explain SB 290, Clarify Certain Building Code Requirement. She moved the adoption of a committee substitute. The motion carried. Senator Foxx moved an unfavorable report of the bill, but favorable as to the committee substitute. The motion carried.

Senator Rand was recognized to explain SB 758, More Sm. Employer Health Ins. Available. He sent forward an amendment and moved its adoption. The motion carried. Senator Rand moved a favorable report of the bill as amended and that it be engrossed into a committee substitute. Senator Soles asked for comments from the audience:

- Mr. Andy Ellen, representing the North Carolina Retail Merchants Association, reported that the retail merchants strongly support the bill
- Mr. Paul Mahoney, representing the North Carolina Association of Health Plans, spoke against the bill
- Ms. Barbara Moralsburg, representing the Department of Insurance, stated the Department is opposed to the bill because of its impact on small groups
- Ms. Leslie Bevacqua, representing the North Carolina Citizens of Business and Industry, said NCCBI has not taken a position on the legislation
- Ms. Perri Morgan, representing the National Federation of Independent Business, said that other states' experience leads NFIB to believe it does not help the health insurance situation for small businesses
- Paul Wilms, representing the North Carolina Homebuilders spoke in support of SB 758.
- Harry Kaplan, representing the North Carolina Association of Health Plans, stated that SB 758 would bifurcate the market.

Senator John Kerr suggested putting a sunset provision in the bill. He sent forth an amendment to sunset the legislation as of January 1, 2008, and moved its adoption. The motion carried. He further moved to give the bill an unfavorable report, but a favorable report to the committee substitute as amended and engrossed into a new committee substitute. The motion carried.

Senator Ellie Kinnaird was recognized to explain SB 590, Moratorium on Soft Drink Contracts/ Schools. No vote was taken on the bill.

Senator Walter Dalton was recognized to explain SB 620, Purchasing Flexibility for Schools. He moved the adoption of a committee substitute. The motion carried. Senator Dalton committed

himself to working with the Department of Administration on their concerns. Senator Dalton moved for an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Senator Scott Thomas was introduced to present SB 769, Beach Plan Homeowners Policy Rate Setting. He commented that he introduced it at the request of the Department of Insurance. Senator Tony Moore moved for the adoption of a committee substitute. The motion carried. Senator Patrick Ballantine moved the adoption of an amendment. The motion carried. Mr. Dashiell Propes of the Department of Insurance told the committee the bill is for the people who live full time and work in eastern North Carolina. Mr. Robert Pascal, representing State Farm Insurance, brought State Farm's concerns to the committee.

The meeting adjourned at 10:00 a.m. without a vote on SB 769.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

CORRECTED REPORT

Monday, April 21, 2003

SENATOR RAND.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **290** Clarify Certain Building Code Requirement.

Draft Number:	PCS 85215
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes
Changes Public to Local:	Yes

S.B. **521** Pyrotechnic Regulation Enhanced.

Draft Number:	PCS 40022
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **620** Purchasing Flexibility for Schools.

Draft Number:	PCS 55177
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **847** Clarify Fees Charged to Residential Tenants.

Draft Number:	PCS 65267
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 290

Short Title:	Clarify Certain Building Code Requirement.	(Public)
Sponsors:	Senators Dorsett, Hagan, and Berger.	
Referred to:	Commerce.	

March 5, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT CITIES MAY ORDER OWNERS OF RESIDENTIAL PROPERTY TO REPAIR RATHER THAN VACATE HOUSING TO MEET MINIMUM CODE STANDARDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-443(3) reads as rewritten:

"(3) That if, after notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order,

a. If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human ~~habitation or to vacate and close the dwelling as a human habitation;~~ habitation. The public officer may order the owner to vacate and close the dwelling as a human habitation rather than repair, alter, or improve the dwelling if the public officer makes findings of fact to support the determination that the dwelling should be vacated and closed as a human habitation; or

b. If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified in the order, to remove or demolish such dwelling. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the city and the

Historic District Commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a)."

SECTION 2. This act is effective when it becomes law.

SENATE BILL 290:
Greensboro Minimum Housing Codes

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senators Dorsett, Hagan, and Berger
Date:	April 17, 2003		
Version:	Proposed Committee Substitute S290-CSSU-9[v.2]	**Summary by:**	Wendy Graf Ray Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 290 would clarify the authority of the City of Greensboro to order owners of residential property to repair dwellings that are determined to be unfit for human habitation.***

CURRENT LAW: G.S. 160A-441 authorizes cities to exercise their police powers to repair, close or demolish dwellings that are found to be unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering the dwellings unsafe, unsanitary, dangerous or detrimental to its residents' health, safety, morals or welfare.

Once a city adopts an ordinance finding that dwellings unfit for human habitation exist in the city, G.S. 160A-443 authorizes the city to adopt and enforce ordinances to address those conditions that must include provisions specifically set out in the statute. G.S. 160A-443(3) requires a designated public officer to proceed in one of the following ways if, after notice and hearing, he determines that a dwelling is unfit for human habitation:

- If repairs can be made at a reasonable cost, order the owner to either:
  - Repair the dwelling so that it is fit for human habitation; or
  - Vacate and close the dwelling as a human habitation.
- If repairs cannot be made at a reasonable cost, order the owner to remove or demolish the dwelling.

If the owner fails to comply with an order within the specified period of time, the city may cause the dwelling to be repaired, closed, or demolished after adopting an ordinance, specific to the property, ordering the public officer to proceed.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 290 would amend G.S. 160A-443 to provide that when it is determined that a dwelling unfit for human habitation can be repaired at a reasonable cost, the public officer must order the owner to repair the dwelling in order to render it fit for human habitation. The public officer would not be authorized to order the owner to vacate and close the dwelling if the cost of repair was reasonable.

The Proposed Committee Substitute would also delete G.S. 160A-443(5a), which provides procedures for a city to make further orders after a dwelling has been vacated and closed for a year after an order was issued or an ordinance passed and the owner has no intention of repairing the dwelling.

The act would only apply to the City of Greensboro.

EFFECTIVE DATE: The act would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 290
PROPOSED COMMITTEE SUBSTITUTE S290-CSSU-9 [v.2]

4/16/2003 3:56:52 PM

Short Title: Greensboro Minimum Housing Codes. (Local)

Sponsors:

Referred to:

March 5, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE CITY OF GREENSBORO MAY ORDER OWNERS OF RESIDENTIAL PROPERTY TO REPAIR RATHER THAN VACATE HOUSING TO MEET MINIMUM CODE STANDARDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-443 reads as rewritten:

"**§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of public officer.**

Upon the adoption of an ordinance finding that dwelling conditions of the character described in G.S. 160A-441 exist within a city, the governing body of the city is hereby authorized to adopt and enforce ordinances relating to dwellings within the city's territorial jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

(1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinance.

(2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the city charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within the county in which the property is located fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or

otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(3) That if, after notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order,

a. If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human ~~habitation or to vacate and close the dwelling as a human habitation; or~~ habitation.

b. If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified in the order, to remove or demolish such dwelling. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the city and the Historic District Commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a).

(4) That, if the owner fails to comply with an order to repair, alter or improve ~~or to vacate and close~~ the dwelling, the public officer may cause the dwelling to be repaired, altered or ~~improved or to be vacated and closed;~~improved, that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a Class 1 misdemeanor.

(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished. The duties of the public officer set forth in subdivisions (4) and (5) shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be

described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

~~(5a) If the governing body shall have adopted an ordinance, or the public officer shall have:~~

~~a. In a municipality located in counties which have a population in excess of 71,000 by the last federal census (including the entirety of any municipality located in more than one county at least one county of which has a population in excess of 71,000), other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;~~

~~b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,~~

~~then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:~~

~~a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty~~

~~percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or~~

~~b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.~~

~~This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.~~

~~This subdivision only applies to municipalities located in counties which have a population in excess of 71,000 by the last federal census (including the entirety of any municipality located in more than one county at least one county of which has a population in excess of 71,000).~~

~~[This subdivision does not apply to the local government units listed in subdivision (5b) of this section.]~~

(5b) If the governing body shall have adopted an ordinance, or the public officer shall have:

a. In a municipality other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to

blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision applies to the Cities of Eden, Greenville, Lumberton, Roanoke Rapids, and Whiteville, to the municipalities in Lee County, and the Towns of Bethel, Farmville, Newport, and Waynesville only.

(6) Liens. –

a. That the amount of the cost of repairs, alterations or improvements, ~~or vacating and closing,~~ or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of this Chapter.

b. If the real property upon which the cost was incurred is located in an incorporated city, then the amount of the cost is also a lien on any other real property of the owner located within the city limits or within one mile thereof except for the owner's primary residence. The additional lien provided in this sub-subdivision is inferior to all prior liens and shall be collected as a money judgment.

c. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the

cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

(7) If any occupant fails to comply with an order to vacate a dwelling, the public officer may file a civil action in the name of the city to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the public officer produces a certified copy of an ordinance adopted by the governing body pursuant to subdivision (5) authorizing the officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the governing body has ordered the public officer to proceed to exercise his duties under ~~subdivisions (4) and~~ subdivision (5) of this section to ~~vacate and close or~~ remove and demolish the dwelling.

(8) That whenever a determination is made pursuant to subdivision (3) of this section that a dwelling must be ~~vacated and closed, or~~ removed or demolished, under the provisions of this section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the public officer, to allow the opportunity for any

organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The public officer or clerk shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the public officer to wait 45 days before causing removal or demolition."

SECTION 2. This act applies only to the City of Greensboro.

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 290
PROPOSED COMMITTEE SUBSTITUTE S290-PCS85215-SU-9

Short Title: Greensboro Minimum Housing Codes. (Local)

Sponsors:

Referred to:

March 5, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE CITY OF GREENSBORO MAY ORDER OWNERS OF RESIDENTIAL PROPERTY TO REPAIR RATHER THAN VACATE HOUSING TO MEET MINIMUM CODE STANDARDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-443 reads as rewritten:

"**§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of public officer.**

Upon the adoption of an ordinance finding that dwelling conditions of the character described in G.S. 160A-441 exist within a city, the governing body of the city is hereby authorized to adopt and enforce ordinances relating to dwellings within the city's territorial jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

(1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinance.

(2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the city charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within the county in which the property is located fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or

otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(3) That if, after notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order,

a. If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human ~~habitation or to vacate and close the dwelling as a human habitation; or~~ habitation.

b. If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified in the order, to remove or demolish such dwelling. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the city and the Historic District Commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a).

(4) That, if the owner fails to comply with an order to repair, alter or improve ~~or to vacate and close~~ the dwelling, the public officer may cause the dwelling to be repaired, altered or ~~improved or to be vacated and closed;~~improved, that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a Class 1 misdemeanor.

(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished. The duties of the public officer set forth in subdivisions (4) and (5) shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be

described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

~~(5a) If the governing body shall have adopted an ordinance, or the public officer shall have:~~

~~a. In a municipality located in counties which have a population in excess of 71,000 by the last federal census (including the entirety of any municipality located in more than one county at least one county of which has a population in excess of 71,000), other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;~~

~~b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,~~

~~then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:~~

~~a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty~~

~~percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or~~

~~b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.~~

~~This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.~~

~~This subdivision only applies to municipalities located in counties which have a population in excess of 71,000 by the last federal census (including the entirety of any municipality located in more than one county at least one county of which has a population in excess of 71,000).~~

~~[This subdivision does not apply to the local government units listed in subdivision (5b) of this section.]~~

(5b) If the governing body shall have adopted an ordinance, or the public officer shall have:

a. In a municipality other than municipalities with a population in excess of 190,000 by the last federal census, issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a, and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or order;

b. In a municipality with a population in excess of 190,000 by the last federal census, commenced proceedings under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance or after such proceedings have commenced,

then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to

blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision applies to the Cities of Eden, Greenville, Lumberton, Roanoke Rapids, and Whiteville, to the municipalities in Lee County, and the Towns of Bethel, Farmville, Newport, and Waynesville only.

(6) Liens. –

a. That the amount of the cost of repairs, alterations or improvements, ~~or vacating and closing,~~ or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of this Chapter.

b. If the real property upon which the cost was incurred is located in an incorporated city, then the amount of the cost is also a lien on any other real property of the owner located within the city limits or within one mile thereof except for the owner's primary residence. The additional lien provided in this sub-subdivision is inferior to all prior liens and shall be collected as a money judgment.

c. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the

cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

(7) If any occupant fails to comply with an order to vacate a dwelling, the public officer may file a civil action in the name of the city to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the public officer produces a certified copy of an ordinance adopted by the governing body pursuant to subdivision (5) authorizing the officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the governing body has ordered the public officer to proceed to exercise his duties under ~~subdivisions (4) and~~ subdivision (5) of this section to ~~vacate and close or~~ remove and demolish the dwelling.

(8) That whenever a determination is made pursuant to subdivision (3) of this section that a dwelling must be ~~vacated and closed, or~~ removed or demolished, under the provisions of this section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the public officer, to allow the opportunity for any

organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The public officer or clerk shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the public officer to wait 45 days before causing removal or demolition."

SECTION 2. This act applies only to the City of Greensboro.

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 590

Short Title:	Moratorium on Soft Drink Contracts/Schools.	(Public)
Sponsors:	Senator Kinnaird.	
Referred to:	Commerce.	

March 31, 2003

A BILL TO BE ENTITLED

AN ACT TO PLACE A MORATORIUM ON THE AUTHORITY OF LOCAL BOARDS OF EDUCATION TO ENTER INTO CONTRACTS FOR THE SALE OF SOFT DRINKS TO STUDENTS IN PUBLIC SCHOOLS, AND TO APPOINT AN INDEPENDENT STUDY COMMISSION TO STUDY THE PUBLIC HEALTH ISSUES AND MAKE RECOMMENDATIONS REGARDING WHETHER CERTAIN FOODS, INCLUDING SOFT DRINKS, SHOULD BE MADE AVAILABLE TO STUDENTS IN PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 115C-264, a local board of education shall not enter into a contract, authorize an agent to enter into a contract, or otherwise delegate the board's authority to enter into a contract that allows soft drinks to be sold to students on school property during the school day. A local board may exercise an existing option to renew or extend that is contained in a contract that allows soft drinks to be sold to students on school property during the school day. However, a local board may not amend an existing contract that allows soft drinks to be sold to students on school property during the school day in order to create an option to extend or renew the period of the contract. For purposes of this act, the term "soft drinks" includes foods of minimal nutritional value as defined in 7 C.F.R. § 210.11(a)(2).

SECTION 2.(a) The Commission on Nutrition and Public School Students is created. The purpose of the Commission is to study the public health issues related to elementary and secondary students consuming foods of minimal nutritional value and whether, and to what extent, those foods should be made available to students in public schools.

SECTION 2.(b) The Commission shall consist of 10 members as follows:

(1) Five members appointed by the President Pro Tempore of the Senate. Of these members, at least one each shall be a member of the Senate, a pediatrician, a specialist in child nutrition, and a dentist.

(2) Five members appointed by the Speaker of the House of Representatives. Of these members, at least one each shall be a member of the House of Representatives, a pediatrician, a specialist in child nutrition, and a dentist.

SECTION 2.(c) The President Pro Tempore of the Senate shall designate one Senator as cochair and the Speaker of the House of Representatives shall designate one Representative as cochair. Vacancies on the Commission shall be filled by the same appointing officer who made the initial appointment. The Commission shall expire upon delivering its final report.

SECTION 2.(d) The Commission, while in the discharge of official duties, may exercise all powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 2.(e) The Commission shall have the following powers and duties:

(1) To review State and federal laws and rules related to the sale of foods of minimal nutritional value to students in public schools.

(2) To review research related to the public health issues of childhood diabetes, tooth decay, eating disorders, and other related nutritional issues.

(3) To review how local school food services contract to obtain food for school meals and whether the method by which other food items are made available to students in schools is consistent with the National School Lunch Program, the National School Breakfast Program, and sound nutritional policy.

(4) To review the impact of the moratorium created in Section 1 of this act on local school administrative units and students.

SECTION 2.(f) The Commission on Nutrition and Public School Students shall submit an interim report to the General Assembly and the Joint Legislative Education Oversight Committee not later than the convening of the 2004 Regular Session of the General Assembly. The report shall make recommendations regarding whether and under what circumstances foods of minimal nutritional value may be made available to students at public schools. The Commission on Nutrition and Public School Students shall submit a final report to the General Assembly and to the Joint Legislative Education Oversight Committee prior to December 1, 2004.

SECTION 2.(g) All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

SECTION 2.(h) Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds to implement the provisions of Section 2 of this act.

SECTION 3. This act is effective when it becomes law. Section 1 applies to contracts entered into on or after the effective date and expires January 31, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 590

Short Title:	Moratorium on Soft Drink Contracts/Schools.	(Public)
Sponsors:	Senator Kinnaird.	
Referred to:	Commerce.	

March 31, 2003

A BILL TO BE ENTITLED

AN ACT TO PLACE A MORATORIUM ON THE AUTHORITY OF LOCAL BOARDS OF EDUCATION TO ENTER INTO CONTRACTS FOR THE SALE OF SOFT DRINKS TO STUDENTS IN PUBLIC SCHOOLS, AND TO APPOINT AN INDEPENDENT STUDY COMMISSION TO STUDY THE PUBLIC HEALTH ISSUES AND MAKE RECOMMENDATIONS REGARDING WHETHER CERTAIN FOODS, INCLUDING SOFT DRINKS, SHOULD BE MADE AVAILABLE TO STUDENTS IN PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 115C-264, a local board of education shall not enter into a contract, authorize an agent to enter into a contract, or otherwise delegate the board's authority to enter into a contract that allows soft drinks to be sold to students on school property during the school day. A local board may exercise an existing option to renew or extend that is contained in a contract that allows soft drinks to be sold to students on school property during the school day. However, a local board may not amend an existing contract that allows soft drinks to be sold to students on school property during the school day in order to create an option to extend or renew the period of the contract. For purposes of this act, the term "soft drinks" includes foods of minimal nutritional value as defined in 7 C.F.R. § 210.11(a)(2).

SECTION 2.(a) The Commission on Nutrition and Public School Students is created. The purpose of the Commission is to study the public health issues related to elementary and secondary students consuming foods of minimal nutritional value and whether, and to what extent, those foods should be made available to students in public schools.

SECTION 2.(b) The Commission shall consist of 10 members as follows:

(1) Five members appointed by the President Pro Tempore of the Senate. Of these members, at least one each shall be a member of the Senate, a pediatrician, a specialist in child nutrition, and a dentist.

(2) Five members appointed by the Speaker of the House of Representatives. Of these members, at least one each shall be a member of the House of Representatives, a pediatrician, a specialist in child nutrition, and a dentist.

SECTION 2.(c) The President Pro Tempore of the Senate shall designate one Senator as cochair and the Speaker of the House of Representatives shall designate one Representative as cochair. Vacancies on the Commission shall be filled by the same appointing officer who made the initial appointment. The Commission shall expire upon delivering its final report.

SECTION 2.(d) The Commission, while in the discharge of official duties, may exercise all powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 2.(e) The Commission shall have the following powers and duties:

(1) To review State and federal laws and rules related to the sale of foods of minimal nutritional value to students in public schools.

(2) To review research related to the public health issues of childhood diabetes, tooth decay, eating disorders, and other related nutritional issues.

(3) To review how local school food services contract to obtain food for school meals and whether the method by which other food items are made available to students in schools is consistent with the National School Lunch Program, the National School Breakfast Program, and sound nutritional policy.

(4) To review the impact of the moratorium created in Section 1 of this act on local school administrative units and students.

SECTION 2.(f) The Commission on Nutrition and Public School Students shall submit an interim report to the General Assembly and the Joint Legislative Education Oversight Committee not later than the convening of the 2004 Regular Session of the General Assembly. The report shall make recommendations regarding whether and under what circumstances foods of minimal nutritional value may be made available to students at public schools. The Commission on Nutrition and Public School Students shall submit a final report to the General Assembly and to the Joint Legislative Education Oversight Committee prior to December 1, 2004.

SECTION 2.(g) All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

SECTION 2.(h) Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds to implement the provisions of Section 2 of this act.

SECTION 3. This act is effective when it becomes law. Section 1 applies to contracts entered into on or after the effective date and expires January 31, 2005.

SENATE BILL 590:
Moratoruim on Soft Drink Contracts/Schools

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Kinnaird
Date:	April 14, 2003	**Summary by:**	Kory J. Goldsmith
Version:	1st Edition		Committee Counsel

SUMMARY: SB590 puts a two year moratorium on local boards of education entering into contracts for the sale of soft drinks on school property to students during the school day. The bill also creates a study commission to look at issues related to nutrition and public schools. The study commission would report its findings and recommendations to the General Assembly and the Joint Legislative Education Oversight Committee. The act is effective when it becomes law and expires January 31, 2005.

CURRENT LAW: The National School Lunch Program (NSLP) is the primary regulation on the sale of any foods at schools. The NSLP provides grants-in-aid and food to states to establish and maintain nonprofit school lunch programs. The NC Department of Public Instruction (DPI) administers the NSLP and has the authority to withhold or reclaim funds from any local school administrative unit that fails to comply with federal or state regulations.

The NSLP requires States to adopt rules to control the sale of "foods in competition" with lunches served under the school lunch program. "Competitive foods" are defined as "foods sold in competition with the Program to children in food service areas during lunch periods". However, state-adopted rules may allow for the sale of competitive foods in the food service area if all the proceeds accrue to the benefit of the nonprofit school food service, or the school or student organization(s) approved by the school.

The NSLP prohibits the sale of "foods with minimal nutritional value"... "in the food service areas during the lunch periods" (interpreted to mean when the first student enters the cafeteria until the last one leaves). "Foods of minimal nutritional value" include artificially sweetened foods that provide less than 5% of the Reference Daily Intakes for each of 8 specified nutrients. Soft drinks are considered foods with minimal nutritional value. Therefore, federal rules only regulate soft drink sales during meal times in the areas where school lunch programs operate. Te federal rules provide that State agencies may "impose additional restrictions on the sale of and income from all foods sold at any time throughout schools" that participate in the NSLP.

G.S.. 115C-264 places one additional restriction upon the sale of soft drinks. It prohibits the sale of soft drinks by "schools" to students at "elementary schools". An elementary school sometimes includes 6th, 7th, and 8th grade students, but not always.

BILL ANALYSIS: SB590 prohibits local boards of education from entering into contracts for the sale of soft drinks to students on school property during school hours. It would not effect existing contracts except to prohibit them from being amended to extend the duration of the contracts. However, the prohibition would not effect contracts already in existence that contain a clause allowing the parties to extend the duration of the contract.

The bill also creates a study commission to examine nutritional issues related to public school students. The commission would consist of 10 members; 5 selected by the President Pro Tempore of the Senate and

5 appointed by the Speaker of the House. At least two of the members would be pediatricians, two would be specialists in child nutrition, and two would be dentists. The commission would be charged with :

- Reviewing State and federal laws and rules related to the sale of foods of minimal nutritutional value to students in public schools.
- Reviewing research related to issues of childhood diabetes, tooth decay, and eating disorders.
- Reviewing how local school food services contract to obtain food for school lunches and whether the methods are consistent with federal programs.
- Reviewing the impact of the moratorium on soft drink contracts on local school administrative units and public school students.

The commission would report to the Short Session of the 2004 General Assembly. The report would include recommendations regarding whether and under what circumstances foods of minimal nutritional value may be made available to students.

S590-SMRC-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 620

Short Title:	Purchasing Flexibility for Schools.	(Public)
Sponsors:	Senators Dalton; Clodfelter, Garrou, Gulley, Hartsell, Lucas, Metcalf, Reeves, Shubert, and Weinstein.	
Referred to:	Commerce.	

March 31, 2003

A BILL TO BE ENTITLED

AN ACT TO GIVE LOCAL BOARDS OF EDUCATION ADDITIONAL PURCHASING FLEXIBILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-522(a) reads as rewritten:

"(a) ~~Except as provided in G.S. 115C-522.1, it~~It shall be the duty of local boards of education to purchase or exchange all supplies, ~~equipment and materials in accordance with contracts made by or with the approval of the Department of Administration.~~equipment, and materials, and such purchases shall be made in accordance with Article 8 of Chapter 143 of the General Statutes. These purchases may be made from contracts made by the Department of Administration. Title to instructional supplies, office supplies, fuel and janitorial supplies, enumerated in the current expense fund budget and purchased out of State funds, shall be taken in the name of the local board of education which shall be responsible for the custody and replacement: Provided, that no contracts shall be made by any local school administrative unit for purchases unless provision has been made in the budget of the unit to pay for the purchases, unless surplus funds are on hand to pay for the purchases, or unless the contracts are made pursuant to G.S. 115C-47(28) and G.S. 115C-528 and adequate funds are available to pay in the current fiscal year the sums obligated for the current fiscal ~~year, and in order to protect the State purchase contractor, it is made the duty of the governing authorities of the local units to pay for these purchases promptly and in accordance with the terms of the contract of purchase.~~year."

SECTION 2. G.S. 115C-522.1 is repealed.

SECTION 3. G.S. 115C-264 reads as rewritten:

"**§ 115C-264. Operation.**

In the operation of their public school food programs, the public schools shall participate in the National School Lunch Program established by the federal government. The program shall be under the jurisdiction of the Division of School Food

Services of the Department of Public Instruction and in accordance with federal guidelines as established by the Child Nutrition Division of the United States Department of Agriculture.

Each school may, with the approval of the local board of education, sell soft drinks to students so long as soft drinks are not sold (i) during the lunch period, (ii) at elementary schools, or (iii) contrary to the requirements of the National School Lunch Program.

All school food services shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced-price lunches to indigent children and for no other purpose. The term "cost of operation" shall be defined as actual cost incurred in the purchase and preparation of food, the salaries of all personnel directly engaged in providing food services, and the cost of nonfood supplies as outlined under standards adopted by the State Board of Education. "Personnel" shall be defined as food service supervisors or directors, bookkeepers directly engaged in food service record keeping and those persons directly involved in preparing and serving food: Provided, that food service personnel shall be paid from the funds of food services only for services rendered in behalf of lunchroom services. Any cost incurred in the provisions and maintenance of school food services over and beyond the cost of operation shall be included in the budget request filed annually by local boards of education with boards of county commissioners. It shall not be mandatory that the provisions of ~~G.S. 115C-522(a) and 143-129~~ G.S. 143-129 be complied with in the purchase of supplies and food for such school food services."

SECTION 4. G.S. 143-48.3 reads as rewritten:

"**§ 143-48.3. Electronic procurement.**

. . .

(b) The Department of Administration, in conjunction with the Office of the State Controller and the Office of Information Technology Services may, upon request, provide to all State agencies, universities, ~~local school administrative units, and the~~and community colleges, training in the use of the electronic procurement system.

. . .

(d) This section does not otherwise modify existing law relating to procurement between The University of North Carolina, UNC Health Care, ~~local school administrative units,~~ community colleges, and the Department of Administration.

. . .

(f) Any State ~~entity, local school administrative unit,~~ entity or community college operating a functional electronic procurement system established prior to September 1, 2001, may until May 1, 2003, continue to operate that system independently or may opt into the North Carolina E-Procurement Service. Each entity subject to this section shall notify the Information Resources Management Commission by January 1, 2002, and annually thereafter, of its intent to participate in the North Carolina E-Procurement Service."

SECTION 5. G.S. 143-49 reads as rewritten:

"**§ 143-49. Powers and duties of Secretary.**

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

. . .

(6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Health and Human Services, to private nonprofit agencies licensed or approved by the Department of Health and Human Services as child placing agencies, residential child-care facilities, private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development, to private higher education institutions that are defined as "institutions" in G.S. 116-22(1), and to counties, cities, towns, local school administrative units, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Secretary of Administration may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract. Prior to adopting rules and regulations under this subdivision, the Secretary of Administration may consult with the Advisory Budget Commission.

. . .

(8) To establish and maintain a procurement card program for use by State agencies, community colleges, ~~nonexempted constituent institutions of The University of North Carolina, and local school administrative units.~~and nonexempted constituent institutions of The University of North Carolina. The Secretary of Administration may adopt temporary rules for the implementation and operation of the program in accordance with the payment policies of the State Controller, after consultation with the Office of Information Technology Services. These rules would include the establishment of appropriate order limits that leverage the cost savings and efficiencies of the procurement card program in conjunction with the fullest possible use of the North Carolina E-Procurement Service. Prior to implementing the program, the Secretary shall consult with the State Controller, the UNC General Administration, the Community Colleges System Office, the State Auditor, the Department of Public Instruction, a representative chosen by the local school administrative units, and the Office of Information Technology Services. The Secretary may periodically adjust the order limit authorized in this section after consulting with the State

Controller, the UNC General Administration, the Community Colleges System Office, the Department of Public Instruction, and the Office of Information Technology Services."

SECTION 6. G.S. 143-53(a)(2) reads as rewritten:

"**§ 143-53. Rules.**

(a) The Secretary of Administration may adopt rules governing the following:

. . .

(2) Prescribing the routine, including consistent contract language, for securing bids on items that do not exceed the bid value benchmark established under the provisions of G.S. 143-53.1 or G.S. 116-31.10. The purchasing delegation for securing offers (excluding the special responsibility constituent institutions of The University of North Carolina), for each State department, institution, agency, ~~community college, and public school administrative unit~~ and community college shall be determined by the Director of the Division of Purchase and Contract. For the State agencies this shall be done following the Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract may set or lower the delegation, or raise the delegation upon written request by the agency, after consideration of their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments, institutions, universities (including the special responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units."

SECTION 7. This act becomes effective May 1, 2003.

SENATE BILL 620:
Purchasing Flexibility for Schools

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Dalton
Date:	April 17, 2003	**Summary by:**	Kory J. Goldsmith
Version:	Proposed Committee Substitute S620-CSRB-8 [v.7]		Committee Counsel

SUMMARY: ***SB 620 removes the requirement that local school administrative units (LEAs) must purchase materials, equipment and supplies under contracts established or approved by the State Department of Administration (DOA). Instead, LEAs would use the same competitive bidding methods used by units of local government. The Proposed Committee Substitute delays the effective date from May 1, 2003, until June 30, 2004. However, under the PCS, a LEA could be removed from the requirement to purchase under State contracts earlier than June 30, 2004, if the LEA is certified as E-procurement compliant by the Office of Information Technology Services and purchases a specified percentage of their materials, equipment, and supplies through the NC E-Procurement Service.***

CURRENT LAW: G.S. 115C-522(a) provides that LEAs must purchase materials, equipment and supplies under contracts established or approved by DOA. G.S. 115C-522.1 provides a limited exception in that it allows LEAs to purchase items from venders who do not have contracts with DOA if the cost is less than the DOA contract cost, the item is the same or similar as an item under DOA contract, the total cost of the contract does not exceed $25,000, and the LEA makes certain reports to the DOA.

BILL ANALYSIS:

Section 1 amends G.S. 115C-522(a) to remove the requirement that LEAs purchase under DOA contracts. Instead, LEAs would use the same competitive bidding system used by units of local governments. It would also the LEA to purchase from contract made by the DOA.

Section 2 repeals G.S. 115C-522.1 regarding the purchasing flexibility for LEAs. This provision is no longer applicable given the changes in G.S. 115C-522.

Sections 3-7 make conforming changes to the statutes.

Section 8 has been added to the bill by the Proposed Committee Substitute. The section acknowledges that the State wants to encourage LEAs to purchase goods through the NC E-Procurement Service. The NC E-Procurement Service is an Internet-based purchasing system that offers electronic purchase order processing and enhanced administrative functions to buyers and suppliers resulting in operational efficiencies and potential cost savings. To use NC E-Procurement Service, a LEA's purchasing system must be interfaced with the Internet-based purchasing system of the Service. The PCS provides that the NC E-Procurement Service must work with the LEAs to accomplish this interface through a graduated process:

- The Service will work with four local school administrative units that represent the two most popular purchasing systems used by the LEAs. The four pilot units will be the LEAs of Guilford

County, Cabarrus County, Sampson County, and Edgecombe County. These four units must be certified as being E-procurement compliant by October 1, 2003.

- After these pilot units are working efficiently and effectively, the Service will work with the remaining LEAs that use one of these two systems on a regional basis. These 111 LEAs must be certified as being E-procurement compliant by January 1, 2005.
- The Service will work with the LEAs of Wake County and Charlotte/Mecklenburg County. These two units have a unique purchasing system. These two units must be certified as being E-procurement compliant by July 1, 2004.

The Office of Information Technology Services, in conjunction with the Department of Public Instruction and the NC E-Procurement Service, will develop standards that must be met to certify a LEA as being "E-procurement complaint". At a minimum, it means that the purchasing systems of the LEA and the Service have been adequately interfaced and the LEA purchasing personnel are trained to use the Service. As of the date a LEA is certified as being E-procurement compliant, it is removed from the requirement to purchase under State contracts, but it will be under an obligation to purchase at least 30% of its remaining unencumbered funds used to purchase supplies, equipment, materials, computer software, and other tangible personal property during that fiscal year through the NC E-Procurement Service. It must purchase at least 35% of its goods through the Service during the following fiscal year and the State encourages the LEA to purchase at least 50% of its goods in this manner. During the second fiscal year following certification, the LEA must purchase at least 40% of its goods through the Service and the State encourages the LEA to purchase at least 70% of its goods in this manner.

Section 9 provides that an LEA is removed from the requirement to purchase under the State term contracts on the date it is certified as E-procurement compliant or April 1, 2004, whichever occurs first.

BACKGROUND: The State, any institution of the state, and any political subdivision of the state including counties and municipalities must use the competitive bidding procedures setout in Article 8 of Chapter 143 of the General Statues. If the total estimated cost of the contract exceeds $90,000, the formal procedures that require advertisement, bid opening, bid deposits and bid evaluations.

Accenture provides the NC E-Procurement Service in return for a 1.75% supplier fee. The Service project began in February 2001. The system was piloted in October 2001 and began to be interfaced with the purchasing systems of various State entities from November 2001 through July 2002. Over $930 million purchases have been made through the system and over 98,000 purchase orders have been issued to vendors through the system. At least 115 State entities have started using the system including 29 State agencies, 26 community colleges, and 24 LEAs. Based on a survey of pre-selected goods, the system appears to decrease the time it takes to issue a purchase order to a vendor by 26% to 50% and it appears to achieve a measured savings of 12%.

S620-SMRC-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S **D**

SENATE BILL 620
PROPOSED COMMITTEE SUBSTITUTE S620-CSRB-8 [v.7]

4/16/2003 5:27:06 PM

Short Title: Purchasing Flexibility for Schools. (Public)

Sponsors:

Referred to:

March 31, 2003

A BILL TO BE ENTITLED

AN ACT TO GIVE LOCAL BOARDS OF EDUCATION ADDITIONAL PURCHASING FLEXIBILITY AND TO ENCOURAGE THEM TO USE THE NC E-PROCUREMENT SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-522(a) reads as rewritten:

"(a) ~~Except as provided in G.S. 115C-522.1, it~~It shall be the duty of local boards of education to purchase or exchange all supplies, ~~equipment and materials in accordance with contracts made by or with the approval of the Department of Administration.~~equipment, and materials, and such purchases shall be made in accordance with Article 8 of Chapter 143 of the General Statutes. These purchases may be made from contracts made by the Department of Administration. Title to instructional supplies, office supplies, fuel and janitorial supplies, enumerated in the current expense fund budget and purchased out of State funds, shall be taken in the name of the local board of education which shall be responsible for the custody and replacement: Provided, that no contracts shall be made by any local school administrative unit for purchases unless provision has been made in the budget of the unit to pay for the purchases, unless surplus funds are on hand to pay for the purchases, or unless the contracts are made pursuant to G.S. 115C-47(28) and G.S. 115C-528 and adequate funds are available to pay in the current fiscal year the sums obligated for the current fiscal ~~year, and in order to protect the State purchase contractor, it is made the duty of the governing authorities of the local units to pay for these purchases promptly and in accordance with the terms of the contract of purchase.~~year."

SECTION 2. G.S. 115C-522.1 is repealed.

SECTION 3. G.S. 115C-47(23) reads as rewritten:

"(23) To Purchase Equipment and Supplies. – Local boards shall contract for equipment and supplies under G.S. ~~115C-522(a), 115C-522.1,~~ 115C-522(a) and 115C-528."

SECTION 4. G.S. 115C-264 reads as rewritten:

"**§ 115C-264. Operation.**

In the operation of their public school food programs, the public schools shall participate in the National School Lunch Program established by the federal government. The program shall be under the jurisdiction of the Division of School Food Services of the Department of Public Instruction and in accordance with federal guidelines as established by the Child Nutrition Division of the United States Department of Agriculture.

Each school may, with the approval of the local board of education, sell soft drinks to students so long as soft drinks are not sold (i) during the lunch period, (ii) at elementary schools, or (iii) contrary to the requirements of the National School Lunch Program.

All school food services shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced-price lunches to indigent children and for no other purpose. The term "cost of operation" shall be defined as actual cost incurred in the purchase and preparation of food, the salaries of all personnel directly engaged in providing food services, and the cost of nonfood supplies as outlined under standards adopted by the State Board of Education. "Personnel" shall be defined as food service supervisors or directors, bookkeepers directly engaged in food service record keeping and those persons directly involved in preparing and serving food: Provided, that food service personnel shall be paid from the funds of food services only for services rendered in behalf of lunchroom services. Any cost incurred in the provisions and maintenance of school food services over and beyond the cost of operation shall be included in the budget request filed annually by local boards of education with boards of county commissioners. It shall not be mandatory that the provisions of ~~G.S. 115C-522(a) and 143-129~~ G.S. 143-129 be complied with in the purchase of supplies and food for such school food services."

SECTION 5. G.S. 143-48.3 reads as rewritten:

"**§ 143-48.3. Electronic procurement.**

. . .

(b) The Department of Administration, in conjunction with the Office of the State Controller and the Office of Information Technology Services may, upon request, provide to all State agencies, universities, ~~local school administrative units,and the~~and community colleges, training in the use of the electronic procurement system.

. . .

(d) This section does not otherwise modify existing law relating to procurement between The University of North Carolina, UNC Health Care, ~~local school administrative units,~~ community colleges, and the Department of Administration.

. . .

(f) Any State ~~entity, local school administrative unit,~~ entity or community college operating a functional electronic procurement system established prior to September 1, 2001, may until May 1, 2003, continue to operate that system independently or may opt into the North Carolina E-Procurement Service. Each entity

subject to this section shall notify the Information Resources Management Commission by January 1, 2002, and annually thereafter, of its intent to participate in the North Carolina E-Procurement Service."

SECTION 6. G.S. 143-49 reads as rewritten:

"**§ 143-49. Powers and duties of Secretary.**

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

. . .

(6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Health and Human Services, to private nonprofit agencies licensed or approved by the Department of Health and Human Services as child placing agencies, residential child-care facilities, private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development, to private higher education institutions that are defined as "institutions" in G.S. 116-22(1), and to counties, cities, towns, local school administrative units, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Secretary of Administration may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract. Prior to adopting rules and regulations under this subdivision, the Secretary of Administration may consult with the Advisory Budget Commission.

. . .

(8) To establish and maintain a procurement card program for use by State agencies, community colleges, ~~nonexempted constituent institutions of The University of North Carolina, and local school administrative units.~~and nonexempted constituent institutions of The University of North Carolina. The Secretary of Administration may adopt temporary rules for the implementation and operation of the program in accordance with the payment policies of the State Controller, after consultation with the Office of Information Technology Services. These rules would include the establishment of appropriate order limits that leverage the cost savings and efficiencies of the procurement card program in conjunction with the fullest possible use of the North Carolina E-Procurement Service. Prior to implementing the program, the Secretary shall consult with the State Controller, the UNC General

Administration, the Community Colleges System Office, the State Auditor, the Department of Public Instruction, a representative chosen by the local school administrative units, and the Office of Information Technology Services. The Secretary may periodically adjust the order limit authorized in this section after consulting with the State Controller, the UNC General Administration, the Community Colleges System Office, the Department of Public Instruction, and the Office of Information Technology Services."

SECTION 7. G.S. 143-53(a)(2) reads as rewritten:

"**§ 143-53. Rules.**

(a) The Secretary of Administration may adopt rules governing the following:

. . .

(2) Prescribing the routine, including consistent contract language, for securing bids on items that do not exceed the bid value benchmark established under the provisions of G.S. 143-53.1 or G.S. 116-31.10. The purchasing delegation for securing offers (excluding the special responsibility constituent institutions of The University of North Carolina), for each State department, institution, agency, ~~community college, and public school administrative unit~~ and community college shall be determined by the Director of the Division of Purchase and Contract. For the State agencies this shall be done following the Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract may set or lower the delegation, or raise the delegation upon written request by the agency, after consideration of their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments, institutions, universities (including the special responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units."

SECTION 8. (a) Encourage Use of NC E-Procurement Service by LEAs. -- The State encourages local school administrative units to use the NC E-Procurement Service.

(b) Certification of E-Procurement Compliance. – The Office of Information Technology Services must certify that a local school administrative unit is E-procurement compliant when the unit's current software purchasing system is adequately interfaced with the NC E-Procurement Service system and the unit's employees involved in the purchasing process have been properly trained in the use of the Service. The Office of Information Technology Services, in consultation with the Department of Public Instruction and the NC E-Procurement Service, may establish the standards that must be met for certification. The Office of Information Technology

Services must notify the Department of Administration of the units certified within three days of the certification.

(c) Pilot Projects. – To use the NC E-Procurement Service, a local school administrative unit's current software purchasing system must be interfaced with the NC E-Procurement Service system. All but two of the 117 local school administrative units utilize one of two systems: ISIS by EMS or SunPac by Sartox. To encourage local school administrative units to use the NC E-Procurement Service, the Service will begin the interface process with four local school administrative units – two of which use ISIS and two of which use SunPac. The four pilot units will be the local school administrative units of Cabarrus County, Edgecombe County, Guilford County, and Sampson County. The four pilot units must be certified as being E-procurement compliant on or before October 1, 2003.

(d) Charlotte/Mecklenburg LEA and Wake County LEA. – The local school administrative units of Charlotte/Mecklenburg and Wake County each utilize a unique software purchasing system. NC E-Procurement Service must begin the process of interfacing the Service's software system with these units' software system. Charlotte/Mecklenburg and Wake County must be certified as E-procurement compliant on or before July 1, 2004.

(e) Remainder of LEAs. – The remaining 111 local school administrative units must be certified as being E-procurement compliant by January 1, 2005. The NC E-Procurement Service will assist the units in interfacing their systems and training their employees on a regional basis by the type of software the unit currently uses.

(f) Obligation of LEAs. – As of the date a local school administrative unit is certified by the Office of Information Technology Services as being E-procurement compliant, it must expend at least thirty percent (30%) of its remaining unencumbered funds used to purchase supplies, equipment, materials, computer software, and other tangible personal property during the fiscal year in which it is certified through the NC E-procurement Service. The unit must expend at least thirty-five percent (35%) of its funds used to purchase supplies, equipment, materials, computer software, and other tangible personal property during the fiscal year following certification through the NC E-Procurement Service and forty percent (40%) during the second fiscal year following certification. The State encourages the units to utilize the NC E-Procurement Service to purchase at least fifty percent (50%) of their supplies, equipment, materials, computer software, and other tangible personal property during the fiscal year following certification and at least seventy percent (70%) of their supplies, equipment, materials, computer software, and other tangible personal property during the second fiscal year following certification.

SECTION 9. Sections 1 through 7 of this act become effective for a local school administrative unit when the unit is certified by the Office of Information Technology Services as being E-procurement compliant, as provided in Section 8 of this act, or April 1, 2004, whichever occurs first. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S **D**

SENATE BILL 620
PROPOSED COMMITTEE SUBSTITUTE S620-PCS55177-RB-8

Short Title: Purchasing Flexibility for Schools. (Public)

Sponsors:

Referred to:

March 31, 2003

A BILL TO BE ENTITLED

AN ACT TO GIVE LOCAL BOARDS OF EDUCATION ADDITIONAL PURCHASING FLEXIBILITY AND TO ENCOURAGE THEM TO USE THE NC E-PROCUREMENT SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-522(a) reads as rewritten:

"(a) ~~Except as provided in G.S. 115C-522.1, it~~It shall be the duty of local boards of education to purchase or exchange all supplies, ~~equipment and materials in accordance with contracts made by or with the approval of the Department of Administration.~~equipment, and materials, and such purchases shall be made in accordance with Article 8 of Chapter 143 of the General Statutes. These purchases may be made from contracts made by the Department of Administration. Title to instructional supplies, office supplies, fuel and janitorial supplies, enumerated in the current expense fund budget and purchased out of State funds, shall be taken in the name of the local board of education which shall be responsible for the custody and replacement: Provided, that no contracts shall be made by any local school administrative unit for purchases unless provision has been made in the budget of the unit to pay for the purchases, unless surplus funds are on hand to pay for the purchases, or unless the contracts are made pursuant to G.S. 115C-47(28) and G.S. 115C-528 and adequate funds are available to pay in the current fiscal year the sums obligated for the current fiscal ~~year, and in order to protect the State purchase contractor, it is made the duty of the governing authorities of the local units to pay for these purchases promptly and in accordance with the terms of the contract of purchase.~~year."

SECTION 2. G.S. 115C-522.1 is repealed.

SECTION 3. G.S. 115C-47(23) reads as rewritten:

"(23) To Purchase Equipment and Supplies. – Local boards shall contract for equipment and supplies under G.S. ~~115C-522(a), 115C-522.1,~~ 115C-522(a) and 115C-528."

SECTION 4. G.S. 115C-264 reads as rewritten:

"**§ 115C-264. Operation.**

In the operation of their public school food programs, the public schools shall participate in the National School Lunch Program established by the federal government. The program shall be under the jurisdiction of the Division of School Food Services of the Department of Public Instruction and in accordance with federal guidelines as established by the Child Nutrition Division of the United States Department of Agriculture.

Each school may, with the approval of the local board of education, sell soft drinks to students so long as soft drinks are not sold (i) during the lunch period, (ii) at elementary schools, or (iii) contrary to the requirements of the National School Lunch Program.

All school food services shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced-price lunches to indigent children and for no other purpose. The term "cost of operation" shall be defined as actual cost incurred in the purchase and preparation of food, the salaries of all personnel directly engaged in providing food services, and the cost of nonfood supplies as outlined under standards adopted by the State Board of Education. "Personnel" shall be defined as food service supervisors or directors, bookkeepers directly engaged in food service record keeping and those persons directly involved in preparing and serving food: Provided, that food service personnel shall be paid from the funds of food services only for services rendered in behalf of lunchroom services. Any cost incurred in the provisions and maintenance of school food services over and beyond the cost of operation shall be included in the budget request filed annually by local boards of education with boards of county commissioners. It shall not be mandatory that the provisions of ~~G.S. 115C-522(a) and 143-129~~ G.S. 143-129 be complied with in the purchase of supplies and food for such school food services."

SECTION 5. G.S. 143-48.3 reads as rewritten:

"**§ 143-48.3. Electronic procurement.**

. . .

(b) The Department of Administration, in conjunction with the Office of the State Controller and the Office of Information Technology Services may, upon request, provide to all State agencies, universities, ~~local school administrative units, and the~~and community colleges, training in the use of the electronic procurement system.

. . .

(d) This section does not otherwise modify existing law relating to procurement between The University of North Carolina, UNC Health Care, ~~local school administrative units,~~ community colleges, and the Department of Administration.

. . .

(f) Any State ~~entity, local school administrative unit,~~ entity or community college operating a functional electronic procurement system established prior to September 1, 2001, may until May 1, 2003, continue to operate that system independently or may opt into the North Carolina E-Procurement Service. Each entity

subject to this section shall notify the Information Resources Management Commission by January 1, 2002, and annually thereafter, of its intent to participate in the North Carolina E-Procurement Service."

SECTION 6. G.S. 143-49 reads as rewritten:

"**§ 143-49. Powers and duties of Secretary.**

The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

. . .

(6) To make available to nonprofit corporations operating charitable hospitals, to local nonprofit community sheltered workshops or centers that meet standards established by the Division of Vocational Rehabilitation of the Department of Health and Human Services, to private nonprofit agencies licensed or approved by the Department of Health and Human Services as child placing agencies, residential child-care facilities, private nonprofit rural, community, and migrant health centers designated by the Office of Rural Health and Resource Development, to private higher education institutions that are defined as "institutions" in G.S. 116-22(1), and to counties, cities, towns, local school administrative units, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Secretary of Administration may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract. Prior to adopting rules and regulations under this subdivision, the Secretary of Administration may consult with the Advisory Budget Commission.

. . .

(8) To establish and maintain a procurement card program for use by State agencies, community colleges, ~~nonexempted constituent institutions of The University of North Carolina, and local school administrative units.~~and nonexempted constituent institutions of The University of North Carolina. The Secretary of Administration may adopt temporary rules for the implementation and operation of the program in accordance with the payment policies of the State Controller, after consultation with the Office of Information Technology Services. These rules would include the establishment of appropriate order limits that leverage the cost savings and efficiencies of the procurement card program in conjunction with the fullest possible use of the North Carolina E-Procurement Service. Prior to implementing the program, the Secretary shall consult with the State Controller, the UNC General

Administration, the Community Colleges System Office, the State Auditor, the Department of Public Instruction, a representative chosen by the local school administrative units, and the Office of Information Technology Services. The Secretary may periodically adjust the order limit authorized in this section after consulting with the State Controller, the UNC General Administration, the Community Colleges System Office, the Department of Public Instruction, and the Office of Information Technology Services."

SECTION 7. G.S. 143-53(a)(2) reads as rewritten:

"**§ 143-53. Rules.**

(a) The Secretary of Administration may adopt rules governing the following:

. . .

(2) Prescribing the routine, including consistent contract language, for securing bids on items that do not exceed the bid value benchmark established under the provisions of G.S. 143-53.1 or G.S. 116-31.10. The purchasing delegation for securing offers (excluding the special responsibility constituent institutions of The University of North Carolina), for each State department, institution, agency, ~~community college, and public school administrative unit~~ and community college shall be determined by the Director of the Division of Purchase and Contract. For the State agencies this shall be done following the Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract may set or lower the delegation, or raise the delegation upon written request by the agency, after consideration of their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments, institutions, universities (including the special responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units."

SECTION 8.(a) Encourage Use of NC E-Procurement Service by LEAs. - The State encourages local school administrative units to use the NC E-Procurement Service.

SECTION 8.(b) Certification of E-Procurement Compliance. – The Office of Information Technology Services must certify that a local school administrative unit is E-procurement compliant when the unit's current software purchasing system is adequately interfaced with the NC E-Procurement Service system and the unit's employees involved in the purchasing process have been properly trained in the use of the Service. The Office of Information Technology Services, in consultation with the Department of Public Instruction and the NC E-Procurement Service, may establish the standards that must be met for certification. The Office of Information Technology

Services must notify the Department of Administration of the units certified within three days of the certification.

SECTION 8.(c) Pilot Projects. – To use the NC E-Procurement Service, a local school administrative unit's current software purchasing system must be interfaced with the NC E-Procurement Service system. All but two of the 117 local school administrative units utilize one of two systems: ISIS by EMS or SunPac by Sartox. To encourage local school administrative units to use the NC E-Procurement Service, the Service will begin the interface process with four local school administrative units – two of which use ISIS and two of which use SunPac. The four pilot units will be the local school administrative units of Cabarrus County, Edgecombe County, Guilford County, and Sampson County. The four pilot units must be certified as being E-procurement compliant on or before October 1, 2003.

SECTION 8.(d) Charlotte/Mecklenburg LEA and Wake County LEA. – The local school administrative units of Charlotte/Mecklenburg and Wake County each utilize a unique software purchasing system. NC E-Procurement Service must begin the process of interfacing the Service's software system with these units' software system. Charlotte/Mecklenburg and Wake County must be certified as E-procurement compliant on or before July 1, 2004.

SECTION 8.(e) Remainder of LEAs. – The remaining 111 local school administrative units must be certified as being E-procurement compliant by January 1, 2005. The NC E-Procurement Service will assist the units in interfacing their systems and training their employees on a regional basis by the type of software the unit currently uses.

SECTION 8.(f) bligation of LEAs. – As of the date a local school administrative unit is certified by the Office of Information Technology Services as being E-procurement compliant, it must expend at least thirty percent (30%) of its remaining unencumbered funds used to purchase supplies, equipment, materials, computer software, and other tangible personal property during the fiscal year in which it is certified through the NC E-Procurement Service. The unit must expend at least thirty-five percent (35%) of its funds used to purchase supplies, equipment, materials, computer software, and other tangible personal property during the fiscal year following certification through the NC E-Procurement Service and forty percent (40%) during the second fiscal year following certification. The State encourages the units to utilize the NC E-Procurement Service to purchase at least fifty percent (50%) of their supplies, equipment, materials, computer software, and other tangible personal property during the fiscal year following certification and at least seventy percent (70%) of their supplies, equipment, materials, computer software, and other tangible personal property during the second fiscal year following certification.

SECTION 9. Sections 1 through 7 of this act become effective for a local school administrative unit when the unit is certified by the Office of Information Technology Services as being E-procurement compliant, as provided in Section 8 of this act, or April 1, 2004, whichever occurs first. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 758

Short Title:	More Sm. Employer Health Ins. Available.	(Public)
Sponsors:	Senators Rand, Clodfelter, and Soles.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO OPEN UP THE HEALTH INSURANCE MARKET FOR SMALL EMPLOYERS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-50-115 is amended by adding a new subsection to read:

"(c) The provisions of this Part do not apply to a trade association group health plan meeting the following conditions:

(1) The sponsoring trade association obtains a license as a trade association group health plan by providing the Commissioner the required information on a form prescribed by the Commissioner at least 90 days before the proposed licensing date. The applicant shall furnish to the Commissioner satisfactory proof of the proposed group's eligibility to meet the requirements of subdivision (2) of this subsection. No application is complete until the Commissioner has received all required information.

(2) Any trade association group health plan shall comprise two or more employers who are members of and are sponsored by a single bona fide trade or professional association. The association shall meet all of the following conditions:

a. Be comprised of members engaged in the same or substantially similar business or profession within the State.

b. Be incorporated in the State.

c. Have been in existence for at least 25 years before the date of application to the Commissioner to form a group.

d. Has been determined by the Internal Revenue Service to be exempt from taxation under 26 U.S.C. § 501(c).

e. Maintains on deposit with an FDIC insured institution reserves of at least one million dollars ($1,000,000).

(3) Two or more trade associations meeting the requirements of this subsection may jointly sponsor a trade association group health plan.

(4) Unless specifically exempted by law, a trade association group health plan shall be subject to the jurisdiction and laws of this State pursuant to Article 49 of this Chapter."

SECTION 2. This act becomes effective October 1, 2003.

SENATE BILL 758: More Small Employer Health Insurance Available.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Rand
Date:	April 17, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 758 would permit a trade organization to form a trade association group health plan without being subject to the restrictions and limitations of the Small Employer Group Health Insurance Reform Act. This bill would allow an insurance carrier to offer health insurance to the members of a bona fide trade organization without having to offer coverage to all other similar types of businesses and employees who are not members of the trade organization.***

CURRENT LAW: Current law requires an insurance carrier to offer all similar persons or employers group health insurance on the same basis. Premiums must be based on the "adjusted community rating" for the total subject population (vs. the population participating in the health plan). Adjustments in premiums from this rating are limited to differences based on the employees age, gender, number of family members covered and geographic area. Premiums cannot be varied by more than 20% from the adjusted community rate.

BILL ANALYSIS: The bill adds an exception to Part 5 of Article 50 of Chapter 58 – Small Employer Group Health Insurance Reform Act, to allow small employers who are members of certain bona fide trade organizations to obtain group health insurance based on the characteristics and ratings of the group and not the entire small employer population. To be a trade association group health plan exempt from this act, the trade organization and the health plan must meet the following conditions:

1. The trade organization must obtain a license from the Commissioner of Insurance as a trade association group health plan.
2. The trade association group health plan must consist of two or more employers who are members of a bona fide trade or professional association that meet the following qualifications:
   - All members are engaged in the same or substantially similar business in the State.
   - The association is incorporated in NC.
   - The association has existed for at least 25 years prior to the date of the application.
   - The association is exempt from federal taxation as a 501(c) corporation.
   - The association maintains reserves on deposit of at least $1,000,000.
3. Two or more trade organizations may jointly sponsor a trade association group health plan.
4. The trade association group health plan is subject to Article 49 of Chapter 58 that gives the State jurisdiction over health care benefit programs.

EFFECTIVE DATE: The bill becomes effective October 1, 2003.

S758-SMRU-V1-001

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 758

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S758-ARU-6 [v.1]

Date _____,2003

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Senator _____

moves to amend the bill on page 1, line 5,
by deleting the citation "G.S. 55-50-115" and substituting "G.S. 58-50-115"; and

on page 1, line 17,
by deleting the word "comprise" and substituting the words "be comprised of".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 769

Short Title:	Beach Plan Homeowners Policy Rate Setting.	(Public)
Sponsors:	Senator Thomas.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH RATE SETTING AND RATE-APPROVAL METHODS FOR THE BEACH PLAN HOMEOWNERS POLICY AND TO PROVIDE INCENTIVES TO BEACH AND COASTAL AREA HOMEOWNERS WHO ESTABLISH AND MAINTAIN RISK PREVENTION AND RISK MITIGATION MEASURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-45-30(d) reads as rewritten:

"(d) As used in this subsection, "homeowners' insurance policy" means a multiperil policy providing full coverage of residential property similar to the coverage provided under an HO-2, HO-3, HO-4, or HO-6 policy under Article 36 of this Chapter. The Association shall issue, for principal residences, homeowners' insurance policies approved by the Commissioner. ~~Homeowners'~~ Subject to underwriting guidelines established by the Association and approved by the Commissioner, homeowners' insurance policies shall be available to persons who reside in the beach and coastal areas and who are unable to obtain homeowners' insurance policies from insurers that are authorized to transact and are actually writing homeowners' insurance policies in this State. The terms and conditions of the homeowners' insurance policies available under this subsection shall not be more favorable than those of homeowners' insurance policies available in the voluntary market in beach and coastal counties. ~~Rates for the homeowners' insurance policies authorized by this subsection shall be set pursuant to rate standards set forth in G.S. 58-40-20(a), and the provisions of G.S. 58-45-45(a) shall not apply.~~"

SECTION 2. G.S. 58-45-35 is amended by adding a new subsection to read:

"(b1) If the Association determines that the property, for which application for a homeowners' policy is made, is insurable, that there is no unpaid premium due from the applicant for prior insurance on the property, and that the underwriting guidelines established by the Association and approved by the Commissioner are met, the

Association, upon receipt of the premium, or part of the premium, as is prescribed in the plan of operation, shall cause to be issued a homeowners' insurance policy."

SECTION 3. G.S. 58-45-45 reads as rewritten:

"**§ 58-45-45. Rates, rating plans, rating rules, and forms applicable.**

(a) Except as provided in subsection (b) of this section, the rates, rating plans, rating rules, and forms applicable to the insurance written by the Association shall be in accordance with the most recent manual rates or adjusted loss costs and forms that are legally in effect in the State. ~~No~~ Except as provided in subsection (c) of this section, no special surcharge, other than those presently in effect, may be applied to the property insurance rates of properties located in the beach area ~~and coastal areas.~~

(b) The rates, rating plans, and rating rules for the separate policies of windstorm and hail insurance described in G.S. 58-45-35(b) shall be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification. The provisions of Articles 40 and 41 of this Chapter shall govern the filings. Policy deductible plans, consistent with G.S. 58-45-1(b), may be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification.

(c) Subject to the filing with and prior approval of the Commissioner of a special surcharge schedule proposed in accordance with guidelines within the plan of operation, the Association may impose special surcharges applicable only to homeowners' policies issued by the Association pursuant to G.S. 58-45-30(d)."

SECTION 4. This act is effective when it becomes law.

SENATE BILL 769:
Beach Plan Homeowners Policy Rate Setting

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	Senator Thomas
Date:	April 17, 2003	**Summary by:**	Tim Hovis
Version:	S769-CSRG-10[v.1]		Committee Counsel

BACKGROUND: The North Carolina Insurance Underwriting Association was created in Article 45 of the General Statutes, *Essential Property Insurance for Beach Area Property*, to provide an adequate market for property insurance in the beach and coastal areas of the state. The Association consists of insurers authorized to write property insurance. Members share in the expenses, profits and losses of the Association and receive credit for property insurance written in beach and coastal areas. The Association is popularly known as the Beach Plan.

SUMMARY: Senate Bill 769 makes various changes to the statutes governing rate setting for beach plan homeowners

Section 1 of the bill provides that homeowners' insurance policies under the Beach Plan are subject to underwriting guidelines established by the Association and approved by the Commissioner of Insurance.

Section 2 provides that if the Association determines (1) that a property is insurable; (2) that no unpaid premium is due for prior insurance on the property, and (3) that underwriting guidelines established by the Association and approved by the Commissioner are met, then an applicant must be issued a homeowners' policy under the Beach Plan, upon receipt of the premium in whole or in part.

Section 3 authorizes the Association to impose special surcharges to homeowners' policies issued under the Beach Plan, subject to the prior approval of a special surcharge schedule by the Commissioner.

EFFECTIVE DATE: Senate Bill 769 is effective when it becomes law.

Summary of Senate Bill 769 – Beach Plan Homeowners Policy Rate Setting

Senate Bill 769 amends provisions in Article 45 (governing the Beach Plan –formally known as the North Carolina Insurance Underwriting Association) to set forth specific rules governing rate setting and underwriting for the new homeowners product to be offered by the Beach Plan beginning May 1, 2003.

The bill:

1. clarifies that homeowners insurance policies will be available to owners of principal residences in the beach and coastal areas, subject to the underwriting guidelines established by the Beach Plan and approved by the Commissioner of Insurance.
2. provides that the Beach Plan shall issue the policy to all eligible property upon receipt of the premium in whole or in part, subject to the underwriting guidelines and the absence of any unpaid premium due for prior insurance on the property.
3. requires that the rates charged for the homeowners policy issued by the Beach Plan be in accordance with the most recent manual rates but may be subject to a schedule of special surcharges filed by the Association and if approved by the Commissioner.

The bill would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 769
PROPOSED COMMITTEE SUBSTITUTE S769-CSRG-10 [v.1]

4/16/2003 8:09:32 PM

Short Title: Beach Plan Homeowners Policy Rate Setting. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH RATE SETTING AND RATE-APPROVAL METHODS FOR THE BEACH PLAN HOMEOWNERS POLICY AND TO PROVIDE INCENTIVES TO BEACH AND COASTAL AREA HOMEOWNERS WHO ESTABLISH AND MAINTAIN RISK PREVENTION AND RISK MITIGATION MEASURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-45-30(d) reads as rewritten:

"(d) As used in this subsection, "homeowners' insurance policy" means a multiperil policy providing full coverage of residential property similar to the coverage provided under an HO-2, HO-3, HO-4, or HO-6 policy under Article 36 of this Chapter. The Association shall issue, for principal residences, homeowners' insurance policies approved by the Commissioner. ~~Homeowners'~~ Subject to underwriting guidelines established by the Association and approved by the Commissioner, homeowners' insurance policies shall be available to persons who reside in the beach and coastal areas and who are unable to obtain homeowners' insurance policies from insurers that are authorized to transact and are actually writing homeowners' insurance policies in this State. The terms and conditions of the homeowners' insurance policies available under this subsection shall not be more favorable than those of homeowners' insurance policies available in the voluntary market in beach and coastal counties. ~~Rates for the homeowners' insurance policies authorized by this subsection shall be set pursuant to rate standards set forth in G.S. 58-40-20(a), and the provisions of G.S. 58-45-45(a) shall not apply.~~"

SECTION 2. G.S. 58-45-35 is amended by adding a new subsection to read:

"(b1) If the Association determines that the property, for which application for a homeowners' policy is made, is insurable, that there is no unpaid premium due from the applicant for prior insurance on the property, and that the underwriting guidelines established by the Association and approved by the Commissioner are met, the

Association, upon receipt of the premium, or part of the premium, as is prescribed in the plan of operation, shall cause to be issued a homeowners' insurance policy."

SECTION 3. G.S. 58-45-45 reads as rewritten:

"**§ 58-45-45. Rates, rating plans, rating rules, and forms applicable.**

(a) Except as provided in subsection (b) of this section, the rates, rating plans, rating rules, and forms applicable to the insurance written by the Association shall be in accordance with the most recent manual rates or adjusted loss costs and forms that are legally in effect in the State. ~~No~~ Except as provided in subsection (c) of this section, no special surcharge, other than those presently in effect, may be applied to the property insurance rates of properties located in the beach ~~area.~~ and coastal areas.

(b) The rates, rating plans, and rating rules for the separate policies of windstorm and hail insurance described in G.S. 58-45-35(b) shall be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification. The provisions of Articles 40 and 41 of this Chapter shall govern the filings. Policy deductible plans, consistent with G.S. 58-45-1(b), may be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification.

(c) Subject to the filing with and prior approval of the Commissioner of a special surcharge schedule proposed in accordance with guidelines within the plan of operation, the Association may impose special surcharges applicable only to homeowners' policies issued by the Association pursuant to G.S. 58-45-30(d)."

SECTION 4. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. S769-CSRG-10[v.1]

H. B. No. _____ DATE April 17, 2003

S. B. No. ~~774~~ 769 Amendment No. #1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Sen.) ~~THOMAS~~ Ballantine

moves to amend the bill on page 2, lines 20 and 21

( ) WHICH CHANGES THE TITLE

by ~~adding as new bill section~~ inserting the following language

"SECTION 3.1. ~~Section~~ Section 9. of S.L. 2002-185 reads as rewritten:

"SECTION 9. Part II of this act becomes effective July 1, 2003. Part IV of this act becomes effective January 1, 2003. The remainder of this act is effective when it becomes law."

and on page 1, lines ~~1~~ 3 through 6 by rewriting the lines to read:

"FOR THE BEACH PLAN HOMEOWNERS POLICY, TO PROVIDE INCENTIVES TO BEACH AND COASTAL AREA HOMEOWNERS WHO ESTABLISH AND MAINTAIN RISK PREVENTION AND RISK MITIGATION MEASURES, AND TO EXTEND THE DEADLINE FOR ISSUANCE OF THE HOMEOWNERS POLICY PRODUCT BY THE BEACH PLAN."

SIGNED ~~[illegible]~~ Ballantine

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 750

Short Title:	Increase Permit Limit for Breweries.	(Public)
Sponsors:	Senator Hagan.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CEILING THAT A SMALL BREWERY MAY PRODUCE WITHOUT BEING REQUIRED TO GO THROUGH A MALT BEVERAGE DISTRIBUTOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1104 reads as rewritten:

"**§ 18B-1104. Authorization of brewery permit.**

The holder of a brewery permit may:

(1) Manufacture malt beverages;

(2) Purchase malt, hops and other ingredients used in the manufacture of malt beverages;

(3) Sell, deliver and ship malt beverages in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that malt beverages may be sold to exporters and nonresident wholesalers only when the purchase is not for resale in this State;

(4) Receive malt beverages manufactured by the permittee in some other state for transshipment to dealers in other states;

(5) Furnish or sell marketable malt beverage products, or packages which do not conform to the manufacturer's marketing standards, if State taxes have been or will be paid, to its employees for the use of the employees or their families and guests in this State;

(6) Give its products to its employees and guests for consumption on its premises;

(7) In areas where the sale is legal, sell the brewery's malt beverages at the brewery upon receiving a permit under G.S. 18B-1001(1). The brewery also may obtain a malt beverage wholesaler permit to sell, deliver, and ship at wholesale only malt beverages manufactured by the brewery. The authorization of this subdivision applies to a brewery

that sells, to consumers at the brewery, to wholesalers, to retailers, and to exporters, fewer than ~~310,000 gallons~~ 100,000 barrels of malt beverages produced by it per year.

A sale or gift under subdivision (5) or (6) shall not be considered a retail or wholesale sale under the ABC laws."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 771

Short Title:	Credit Scoring Limitation.	(Public)
Sponsors:	Senator Thomas.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE USE OF A PERSON'S CREDIT HISTORY FOR DISCOUNTING RATES ON AUTOMOBILE AND HOMEOWNERS' INSURANCE AND TO PROHIBIT THE USE OF A PERSON'S CREDIT HISTORY AS A SOLE BASIS FOR TERMINATING INSURANCE COVERAGE, CEDING AN AUTOMOBILE INSURANCE POLICY TO THE REINSURANCE FACILITY, OR SUBJECTING A POLICY TO CONSENT TO RATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-90. Prohibitions on using credit scoring to rate nonfleet private passenger motor vehicle and residential property insurance; exceptions.**

(a) Definitions. – As used in this section:

(1) "Adverse Action" has the same meaning as in section 1681a(k) of the federal Fair Credit Reporting Act and including a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of any insurance, existing or applied for, in connection with the underwriting of insurance.

(2) "Credit report" means any written, oral, or other communication of any information by a consumer reporting agency that bears on a consumer's credit worthiness, credit standing, or credit capacity. Credit report does not include accident or traffic violation records as maintained by the North Carolina Division of Motor Vehicles or any other law enforcement agency, a property loss report or claims history that does not include information that bears on a consumer's credit worthiness, credit standing, or credit capacity, or any report containing information solely as to transactions or experiences between the consumer and the person making the report.

(3) "Credit score" means a score that is derived by utilizing data from an individual's credit report in an algorithm, computer program, model, or other process that reduces the data to a number or rating.

(4) "Private passenger motor vehicle" has the same meaning as set forth in G.S. 58-40-10.

(5) "Residential property" means real property with not more than four housing units located in this State, the contents thereof and valuable interest therein, and insurance coverage written in connection with the sale of that property. It also includes mobile homes, modular homes, townhomes, condominiums, and insurance on contents of apartments and rental property used for residential purposes.

(b) Prohibitions; Exceptions. – In the rating and underwriting of private passenger motor vehicle and residential property insurance coverage, insurers shall not use credit scoring as the sole basis for any of the following:

(1) Terminating an existing policy or any coverage in an existing policy.

(2) Ceding motor vehicle liability coverage to the North Carolina Motor Vehicle Reinsurance Facility.

(3) Subjecting a policy to consent to rate, as specified in G.S. 58-36-30(b).

For the rating and underwriting of private passenger motor vehicle and residential property insurance coverage, credit scoring may be used only to discount rates.

(c) Notification. – If a credit report is used in conjunction with other criteria to take an adverse action, the insurer shall provide the applicant or policyholder with written notice of the action taken, in a form approved by the Commissioner. The notification shall include, in easily understandable language:

(1) The specific reason for the adverse action and, if the adverse action was based upon a credit score, a description of the factors that were the primary influence on the score.

(2) The name, address, and toll-free telephone number of the credit bureau that provided the insurer with the credit-based information.

(3) The fact that the consumer has the right to obtain a free copy of the consumer's credit report from the appropriate credit bureau.

(4) The fact that the consumer has the right to challenge information contained in the consumer's credit report.

(d) Disputed Credit Report Information. – An applicant or policyholder who disputes the credit report information used with other criteria by the insurer to take an adverse action against the applicant or policyholder shall have the rights afforded an individual under G.S. 58-39-50. The Commissioner may enforce the provisions of this section by all means allowed by law, including the authority granted in G.S. 58-39-70. For purposes of the operation of this subsection, credit report information shall constitute "recorded personal information".

(e) Filing. – Insurers that use insurance scores to underwrite and rate risks shall file their scoring models, or other scoring processes, with the Department. A filing that includes insurance scoring may include loss experience justifying the applicable

surcharge or credit. A filer may request that its credit score data be considered a trade secret and may designate parts of its filings accordingly."

SECTION 2. This act becomes effective January 1, 2004, and applies to policies issued or renewed on or after that date and to applications for coverage made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 846

Short Title:	Solar Energy Systems.	(Public)
Sponsors:	Senator Gulley.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT ENCOURAGING THE USE OF SOLAR ENERGY SYSTEMS AND PROHIBITING ORDINANCES, COVENANTS, AND OTHER RESTRICTIONS THAT UNREASONABLY RESTRICT THE INSTALLATION OR USE OF SUCH SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 113C.

"Solar Energy.

"**§ 113C-1. Solar Energy Systems.**

(a) It is the policy of the State to promote and encourage the use of solar energy and to remove obstacles that discourage or prevent the use of such systems.

(b) The following definitions apply in this section:

(1) Significantly. – An amount exceeding twenty percent (20%) of the cost of a solar energy system or decreasing the efficiency of a system by an amount exceeding twenty percent (20%), as originally specified and proposed.

(2) Solar energy system. – A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or to provide for the collection, storage, conversion, and distribution of solar energy for space heating or cooling, water heating, or electricity generation.

(c) Notwithstanding any other provision of law, no governing body shall adopt an ordinance that effectively prohibits or unreasonably restricts the installation or use of a solar energy system. Any covenant, restriction, or other condition contained in any deed, contract, security agreement, or other instrument affecting the transfer or sale of any real property or any interest therein that effectively prohibits or unreasonably restricts the installation or use of a solar energy system is void and unenforceable. For

purposes of this section, an ordinance or covenant, restriction, or other condition effectively prohibits or unreasonably restricts the installation or use of a solar energy system if it significantly increases the cost of a solar energy system or significantly decreases the efficiency or expected performance of a solar energy system.

(d) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the approving entity in the same manner as an application for approval of an architectural modification to the property. Approval shall not be willfully avoided or delayed.

(e) Any person or entity, other than a public entity, that willfully violates this section shall be liable to the applicant for actual damages resulting from the violation and shall pay the applicant a civil penalty in an amount not to exceed one thousand dollars ($1,000). In any action to enforce compliance with this section, the prevailing party shall be awarded costs and reasonable attorney's fees."

SECTION 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 17, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wims	NCHBA
[illegible]	Public Staff
Dwight Allen	NC Telephone Coalition
Jo Anne Sanford	NC Utilities Comm.
Glenn Wells	Hoffman - LaRoche
Brian Shank	AstraZeneca
John Bowdish	AstraZeneca
Barbara Canaday	MFS
Tom Beason	NC Envir. Def
Sharon Hayes	Dept. of Administration
[signature]	Bode Call & Stroupe LLP

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 17, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Dobson	NC StateWatch.
Leanne Winner	NCSBA
Susan Harrison	WCPSS
[illegible]	NCRA
ANDY ELLEN	NRMA
FRAN PRESTON	NCRMA
Stephanie Simpson	NCAR
Bill Suggin	KCCA
Larry Shirley	State Energy Office, DOA
RICHARD HARKRADER	NC SUSTAINABLE ENERGY ASSOC
John Phelps	NCLM

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 17, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
McKinley Cobb, Jr.	NC DOA
Katherine Joyce	NCASA
Bob Hamilton	DOA - P&C
Carlton Mayeux	DOA
George Millsaps	DOA
David Sadler	State Farm
Bob Gillam	Public Staff - NCUC
Bob Bennink	NCUC Staff
Leslie Bussacca	NCCBD
Rob Paschal	Young, Moore
Ed Regan	N.C.A.C.C.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 17, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peyton Maynard	
Deschutes Rogers	NC DOT
Frank Folger	"
Barbara Burke	"
Sarah Stuhr	NCSDA
George Suddath	NCSDA
Buford Gunnels	NCSDA
John May	NC Chd Council
Mike Owen	NC State AFL-CIO
Joseph R. Hayes	NC Solar Center
Valerie Everette	NC Solar Center

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 17, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan Gouchoe	NC Solar Center, NCSU
Steve Kalland	NC State University
Steve Carroll	NC Farm Bureau Ins Co.
Nancy Meehan	NCICUA
PAUL MAHONEY	NCAHP
Andrew Meehan	NC Assoc. of Elec. Coop.
Sti Meehan	JMC
Karen Brown	NC DOC
Tracy Little	NCDOC
Kevin Leonard	WCSR
Sarah Lane	Sen. Kinnaird

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 17, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joyce Peters	NCAssoc/NAMIC
[signature]	NCAHP
ANN LORE	OWNS
BEN MATHEW	NCDPI
[signature]	Bonn & Assoc -
[signature]	Moore + Van allen
GARY SALAMIDO	GSK
[signature]	NCAHP
JOHN GOODMAN	MERCER & ASSOC.
[signature]	NCPMA
Gary Harris	NCPMA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 17, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Stock	NC Bankers
Carrie Cox	BPMHL
[illegible]	BCBSNC
John Murphy	NC DPI
Doris Weaver	NC CWA Political Council
DAN WHITLEY	CWA 3611
Susan M Smith	NC CWA Political Caucus
Drew Edwards	CWA-3611

AGENDA

SENATE COMMERCE COMMITTEE
Tuesday, April 22, 2003 at 11:00 AM
Room 1027, Legislative Building

I. Welcome and Opening Remarks

II. Bills to be Considered

SB 750	Increase Permit Limit for Breweries.	Senator Hagan
SB 758	More Sm. Employer Health Ins. Available.	Senator Rand
SB 769	Beach Plan Homeowners Policy Rate Setting.	Senator Thomas
SB 771	Credit Scoring Limitation.	Senator Thomas
SB 801	Prohibited Telecommunications Agreements.	Senator Hoyle
SB 846	Solar Energy Systems.	Senator Gulley
SB 872	Unwanted Telephone Solicitations.	Senator Thomas
SB 887	Ovarian Cancer Det./High Risk Women.	Senator Carpenter

III. Other Business

IV. Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, April 22, 2003 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, April 22, 2003, in Room 1027 of the Legislative Building. Twenty members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced the pages: Ashley Bryan of Fayetteville, sponsored by Senator Tony Rand; and Quinton Porter of Greensboro, sponsored by Senator Katie Dorsett.

Senator Soles introduced Senator Tony Rand to reconsider SB 758, More Sm. Employer Health Ins. Available. He moved that the committee reconsider the vote by which a committee substitute for SB 758 was reported favorably at the Thursday, April 17th meeting of the Commerce Committee. The motion carried. Senator Rand then moved the adoption of a new proposed committee substitute. The motion carried. Then Senator Rand sent forth an amendment and moved its adoption. The motion carried. After discussion, Senator Kerr suggested putting a sunset on the legislation. Senator Rand then sent forth an amendment adding a sunset provision to the bill and moved its adoption. The motion carried. There were no objections expressed from the audience. Senator Rand moved for an unfavorable report of the bill, but favorable to the committee substitute adopted on April 22. The motion carried.

Senator Soles recognized Senator Wib Gulley to speak on SB 846, Solar Energy Systems. Senator David Hoyle moved the adoption of a committee substitute. The motion carried. Mr. Larry Shirley, Director of the State Energy Office, Department of Administration, spoke in favor of the bill. Senator Rand sent forth an amendment and moved its adoption. The motion carried. Senator Carpenter moved an unfavorable report of the bill, but favorable report of the committee substitute as amended and engrossed into a new committee substitute. The motion carried.

Senator Kay Hagan was recognized to speak on SB 750, Increase Permit Limit for Breweries. She moved the adoption of an amendment. The motion carried. Mr. T. Jerry Williams, representing the North Carolina Restaurant Association, spoke in favor of the bill. Mr. Chris Valauri, representing the Beer and Wine Wholesalers Association, spoke in opposition to the bill, favoring the three-tiered system, which maintains a role for the wholesaler. Senator Hagan moved for a favorable report of the bill as amended, and that it be engrossed into a committee substitute. The motion carried.

Senator Soles introduced Senator Scott Thomas to continue consideration of SB 769, Beach Plan Homeowners Policy Rate Setting. Senator Hoyle moved the adoption of a new committee substitute. The motion carried. Senator Hoyle then moved the adoption of an amendment. Mr. Tim Hovis, Research Division, explained the amendment. The motion carried. Mr. Dashiell Propes, representing the Department of Insurance, explained the Department's interest in the bill. Senator Hoyle moved an unfavorable report of the bill, but favorable report of the committee substitute (adopted on April 22) as amended and engrossed into a new committee substitute. The motion carried.

Senator Thomas went on to discuss SB 771, Credit Scoring Limitation, another bill requested by the Department of Insurance. Senator Hoyle moved the adoption of a committee substitute. The motion carried. Senator Hoyle moved unfavorable report of the bill, but favorable as to the committee substitute. The motion carried.

Senator Hoyle was recognized to speak on SB 801, Prohibited Telecommunications Agreements. He moved the adoption of a committee substitute. The motion carried. Senator Rand moved an unfavorable report of the bill, but favorable as to the committee substitute. The motion carried.

Senator Bob Carpenter was recognized to speak on SB 887, Ovarian Cancer Det./High Risk Women. He passed out material from the National Conference of State Legislatures showing what states are doing for ovarian cancer (see attachment). He moved the adoption of a committee substitute. The motion carried. Senator Hoyle moved for an unfavorable report of the bill, but favorable as to the committee substitute. The motion carried.

SB 661 and SB 872 were not heard at the sponsors' requests.

The meeting adjourned at 12:00 noon.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Wednesday, April 23, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **750** Increase Permit Limit for Breweries.

Draft Number:	PCS 65271
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **758** More Sm. Employer Health Ins. Available.

Draft Number:	PCS 55182
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **771** Credit Scoring Limitation.

Draft Number:	PCS 40030
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

S.B. **846** Solar Energy Systems.

Draft Number:	PCS 55180
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

S.B. **887** Ovarian Cancer Det./High Risk Women.

Draft Number:	PCS 65272
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 5

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Thursday, April 24, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **378** 311 Service.
Sequential Referral: None
Recommended Referral: None

S.B. **963** Prevent Price Gouging During Disasters.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **769** Beach Plan Homeowners Policy Rate Setting.
Draft Number: PCS 40029
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **801** Prohibited Telecommunications Agreements.
Draft Number: PCS 55179
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 758

Short Title:	More Sm. Employer Health Ins. Available.	(Public)
Sponsors:	Senators Rand, Clodfelter, and Soles.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO OPEN UP THE HEALTH INSURANCE MARKET FOR SMALL EMPLOYERS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 55-50-115 is amended by adding a new subsection to read:

"(c) The provisions of this Part do not apply to a trade association group health plan meeting the following conditions:

(1) The sponsoring trade association obtains a license as a trade association group health plan by providing the Commissioner the required information on a form prescribed by the Commissioner at least 90 days before the proposed licensing date. The applicant shall furnish to the Commissioner satisfactory proof of the proposed group's eligibility to meet the requirements of subdivision (2) of this subsection. No application is complete until the Commissioner has received all required information.

(2) Any trade association group health plan shall comprise two or more employers who are members of and are sponsored by a single bona fide trade or professional association. The association shall meet all of the following conditions:

a. Be comprised of members engaged in the same or substantially similar business or profession within the State.

b. Be incorporated in the State.

c. Have been in existence for at least 25 years before the date of application to the Commissioner to form a group.

d. Has been determined by the Internal Revenue Service to be exempt from taxation under 26 U.S.C. § 501(c).

e. Maintains on deposit with an FDIC insured institution reserves of at least one million dollars ($1,000,000).

(3) Two or more trade associations meeting the requirements of this subsection may jointly sponsor a trade association group health plan.

(4) Unless specifically exempted by law, a trade association group health plan shall be subject to the jurisdiction and laws of this State pursuant to Article 49 of this Chapter."

SECTION 2. This act becomes effective October 1, 2003.

SENATE BILL 758: More Small Employer Health Insurance Available.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Rand
Date:	April 17, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 758 would permit a trade organization to form a trade association group health plan without being subject to the restrictions and limitations of the Small Employer Group Health Insurance Reform Act. This bill would allow an insurance carrier to offer health insurance to the members of a bona fide trade organization without having to offer coverage to all other similar types of businesses and employees who are not members of the trade organization.***

CURRENT LAW: Current law requires an insurance carrier to offer all similar persons or employers group health insurance on the same basis. Premiums must be based on the "adjusted community rating" for the total subject population (vs. the population participating in the health plan). Adjustments in premiums from this rating are limited to differences based on the employees age, gender, number of family members covered and geographic area. Premiums cannot be varied by more than 20% from the adjusted community rate.

BILL ANALYSIS: The bill adds an exception to Part 5 of Article 50 of Chapter 58 – Small Employer Group Health Insurance Reform Act, to allow small employers who are members of certain bona fide trade organizations to obtain group health insurance based on the characteristics and ratings of the group and not the entire small employer population. To be a trade association group health plan exempt from this act, the trade organization and the health plan must meet the following conditions:

1. The trade organization must obtain a license from the Commissioner of Insurance as a trade association group health plan.
2. The trade association group health plan must consist of two or more employers who are members of a bona fide trade or professional association that meet the following qualifications:
   - All members are engaged in the same or substantially similar business in the State.
   - The association is incorporated in NC.
   - The association has existed for at least 25 years prior to the date of the application.
   - The association is exempt from federal taxation as a 501(c) corporation.
   - The association maintains reserves on deposit of at least $1,000,000.
3. Two or more trade organizations may jointly sponsor a trade association group health plan.
4. The trade association group health plan is subject to Article 49 of Chapter 58 that gives the State jurisdiction over health care benefit programs.

EFFECTIVE DATE: The bill becomes effective October 1, 2003.

S758-SMRU-V1-001

SENATE BILL 758: More Small Employer Health Insurance Available.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Rand
Date:	April 17, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S758-CSRU-22		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 758 would permit a trade organization to form a trade association group health plan without being subject to the restrictions and limitations of the Small Employer Group Health Insurance Reform Act. This bill would allow an insurance carrier to offer health insurance to the members of a bona fide trade organization without having to offer coverage to all other similar types of businesses and employees who are not members of the trade organization.***

CURRENT LAW: Current law requires an insurance carrier to offer all similar persons or employers group health insurance on the same basis. Premiums must be based on the "adjusted community rating" for the total subject population (vs. the population participating in the health plan). Adjustments in premiums from this rating are limited to differences based on the employees age, gender, number of family members covered and geographic area. Premiums cannot be varied by more than 20% from the adjusted community rate.

BILL ANALYSIS: Section 1 of the bill deletes definitions for "actuarial certification" and "adjusted community rating" to conform to changes made in Section 3 of the bill.

Section 2 adds an exception to Part 5 of Article 50 of Chapter 58 – Small Employer Group Health Insurance Reform Act, to allow small employers who are members of certain bona fide trade organizations to obtain group health insurance based on the characteristics and ratings of the group and not the entire small employer population. To be a trade association group health plan exempt from this act, the trade organization and the health plan must meet the following conditions:

1. The trade organization must obtain a license from the Commissioner of Insurance as a trade association group health plan.
2. The trade association group health plan must consist of two or more employers who are members of a bona fide trade or professional association that meet the following qualifications:
    a. All members are engaged in the same or substantially similar business in the State.
    b. The association is incorporated in NC.
    c. The association has existed for at least 25 years prior to the date of the application.
    d. The association is exempt from federal taxation as a 501(c) corporation.
    e. The association maintains reserves on deposit of at least $1,000,000.
3. Two or more trade organizations may jointly sponsor a trade association group health plan.
4. The trade association group health plan is subject to Article 49 of Chapter 58 that gives the State jurisdiction over health care benefit programs.

Section 3 repeals the provisions that require small employer health plans to be subject to the adjusted community rating, restricts premium increases to once every 12-months in most cases, limits the

amount of premium increases to a formula tied to the adjusted community rating, and limits carriers from applying difference geographic rating factors within the same county. Section 3 also repeals the requirement that each small employer carrier annually file with the Commissioner of Insurance an actuarial certification certifying that the carrier is in compliance with the North Carolina Small Employer Group Health Coverage Reform Act and that its ratings are actuarially sound. A separate filing to this effect is no longer necessary due to the deletion of 58-50-130(b).

EFFECTIVE DATE: The bill becomes effective October 1, 2003.

S758-SMRU-V2-001

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§ 58-50-110. Definitions.

As used in this Act:

(1) Repealed by Session Laws 2001-334, s. 12.1.

(1a) "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the Commissioner that a small employer carrier is in compliance with the provisions of G.S. 58-50-130, and to the extent applicable, the provisions of Article 68 of this Chapter, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(1b) "Adjusted community rating" means a method used to develop carrier premiums which spreads financial risk across a large population and allows adjustments for the following demographic factors: age, gender, family composition, and geographic areas, as determined pursuant to G.S. 58-50-130(b).

.....

§ 58-50-130. Required health care plan provisions.

.....

(b) For all small employer health benefit plans that are subject to this section, premium rates for health benefit plans subject to this section are subject to the following provisions:

(1) Small employer carriers shall use an adjusted-community rating methodology in which the premium for each small employer can vary only on the basis of the eligible employee's or dependent's age as determined in accordance with subdivision (6) of this subsection, the gender of the eligible employee or dependent, number of family members covered, or geographic area as determined under subdivision (7) of this subsection. Premium rates charged during a rating period to small employers with similar case characteristics for same coverage shall not vary from the adjusted community rate by more than twenty percent (20%) for any reason, including differences in administrative costs and claims experience.

(2) Rating factors related to age, gender, number of family members covered, or geographic location may be developed by each carrier to reflect the carrier's experience. The factors used by carriers are subject to the Commissioner's review;

(3) A small employer carrier shall not modify the premium rate charged to a small employer or a small employer group member, including changes in rates related to the increasing age of a group member, for 12 months from the initial issue date or renewal date, unless the group is composite rated and composition of the group changed by twenty percent (20%) or more or benefits are changed. The percentage increase in the premium rate charged to a small employer for a new rating period shall not exceed the sum of the following:

a. The percentage change in the adjusted community rate as measured from the first day of the prior rating period to the first day of the new rating period, and

b. Any adjustment, not to exceed fifteen percent (15%) annually, due to claim experience, health status, or duration of coverage of the employees or dependents of the small employer, and

c. Any adjustment because of change in coverage or change in case characteristics of the small employer group.

(4), (5) Repealed by Session Laws 1995, c. 238, s. 1.

(6) For the purposes of subsection (b) of this section, a small employer carrier shall, unless the small employer carrier uses composite rating, use the following age brackets:

a. Younger than 15 years;
b. 15 to 19 years;
c. 20 to 24 years;
d. 25 to 29 years;
e. 30 to 34 years;
f. 35 to 39 years;
g. 40 to 44 years;
h. 45 to 49 years;
i. 50 to 54 years;
j. 55 to 59 years;
k. 60 to 64 years;
l. 65 years.

Carriers may combine, but shall not split, complete age brackets for the purposes of determining rates under subsection (b) of this section. Small employer carriers shall be permitted to develop separate rates for individuals aged 65 years and older for coverage for which Medicare is the primary payor and coverage for which Medicare is not the primary payor.

(7) For the purposes of subsection (b) of this section, a carrier shall not apply different geographic rating factors to the rates of small employers located within the same county; and

(8) The Department may adopt rules to administer this subsection and to assure that rating practices used by small employer carriers are consistent with the purposes of this subsection. Those rules shall include consideration of differences based on the following:

a. Health benefit plans that use different provider network arrangements may be considered separate plans for the purposes of determining the rating in subdivision (1) of this subsection, provided that the different arrangements are expected to result in substantial differences in claims costs;

b. Except as provided for in sub-subdivision a. of this subdivision, differences in rates charged for different health benefit plans shall be reasonable and reflect objective differences in plan design, but shall not permit differences in premium rates because of the case characteristics of groups assumed to select particular health benefit plans; and

c. Small employer carriers shall apply allowable rating factors consistently with respect to all small employers.

.....

(f) Each small employer carrier shall file with the Commissioner annually on or before March 15 an actuarial certification certifying that it is in compliance with this Act and that its rating methods are actuarially sound. The small employer carrier shall retain a copy of the certification at its principal place of business.

.....

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 758
PROPOSED COMMITTEE SUBSTITUTE S758-CSRU-22 [v.2]

4/21/2003 2:30:47 PM

Short Title: More Sm. Employer Health Ins. Available. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO OPEN UP THE HEALTH INSURANCE MARKET FOR SMALL EMPLOYERS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-50-110(1a) and (1b) are repealed.

SECTION 2. G.S. 58-50-115 is amended by adding a new subsection to read:

"(c) The provisions of this Part do not apply to a trade association group health plan meeting the following conditions:

(1) The sponsoring trade association obtains a license as a trade association group health plan by providing the Commissioner the required information on a form prescribed by the Commissioner at least 90 days before the proposed licensing date. The applicant shall furnish to the Commissioner satisfactory proof of the proposed group's eligibility to meet the requirements of subdivision (2) of this subsection. No application is complete until the Commissioner has received all required information.

(2) Any trade association group health plan shall be comprised of two or more employers who are members of and are sponsored by a single bona fide trade or professional association. The association shall meet all of the following conditions:

a. Be comprised of members engaged in the same or substantially similar business or profession within the State.

b. Be incorporated in the State.

c. Have been in existence for at least 25 years before the date of application to the Commissioner to form a group.

d. Has been determined by the Internal Revenue Service to be exempt from taxation under 26 U.S.C. § 501(c).

e. Maintains on deposit with an FDIC insured institution reserves of at least one million dollars ($1,000,000).

(3) Two or more trade associations meeting the requirements of this subsection may jointly sponsor a trade association group health plan.

(4) Unless specifically exempted by law, a trade association group health plan shall be subject to the jurisdiction and laws of this State pursuant to Article 49 of this Chapter."

SECTION 3. G.S. 58-50-130(b) and (f) are repealed.

SECTION 4. This act becomes effective October 1, 2003.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 758

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S758-ARU-6 [v.1]

Date 4/17/03 ,2003

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Senator RAND

moves to amend the bill on page 1, line 5,
by deleting the citation "G.S. 55-50-115" and substituting "G.S. 58-50-115"; and

on page 1, line 17,
by deleting the word "comprise" and substituting the words "be comprised of".

SIGNED Tony Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-17-03

S. B. No. 758 Amendment No. 2

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) KERR
Sen.)

1 moves to amend the bill on page 2, line 6

2 ( ) WHICH CHANGES THE TITLE

3 by DELETING THE WORDS "OCTOBER 1, 2003." AND

4 SUBSTITUTING THE WORDS "OCTOBER 1, 2003, AND EXPIRES

5 ON JANUARY 1, 2008."

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SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 846

Short Title:	Solar Energy Systems.	(Public)
Sponsors:	Senator Gulley.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT ENCOURAGING THE USE OF SOLAR ENERGY SYSTEMS AND PROHIBITING ORDINANCES, COVENANTS, AND OTHER RESTRICTIONS THAT UNREASONABLY RESTRICT THE INSTALLATION OR USE OF SUCH SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 113C.

"Solar Energy.

"**§ 113C-1. Solar Energy Systems.**

(a) It is the policy of the State to promote and encourage the use of solar energy and to remove obstacles that discourage or prevent the use of such systems.

(b) The following definitions apply in this section:

(1) Significantly. – An amount exceeding twenty percent (20%) of the cost of a solar energy system or decreasing the efficiency of a system by an amount exceeding twenty percent (20%), as originally specified and proposed.

(2) Solar energy system. – A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or to provide for the collection, storage, conversion, and distribution of solar energy for space heating or cooling, water heating, or electricity generation.

(c) Notwithstanding any other provision of law, no governing body shall adopt an ordinance that effectively prohibits or unreasonably restricts the installation or use of a solar energy system. Any covenant, restriction, or other condition contained in any deed, contract, security agreement, or other instrument affecting the transfer or sale of any real property or any interest therein that effectively prohibits or unreasonably restricts the installation or use of a solar energy system is void and unenforceable. For

purposes of this section, an ordinance or covenant, restriction, or other condition effectively prohibits or unreasonably restricts the installation or use of a solar energy system if it significantly increases the cost of a solar energy system or significantly decreases the efficiency or expected performance of a solar energy system.

(d) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the approving entity in the same manner as an application for approval of an architectural modification to the property. Approval shall not be willfully avoided or delayed.

(e) Any person or entity, other than a public entity, that willfully violates this section shall be liable to the applicant for actual damages resulting from the violation and shall pay the applicant a civil penalty in an amount not to exceed one thousand dollars ($1,000). In any action to enforce compliance with this section, the prevailing party shall be awarded costs and reasonable attorney's fees."

SECTION 2. This act is effective when it becomes law.

SB 846:
Solar Energy Systems

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Sen. Gulley
Date:	April 17, 2003	**Summary by:**	Steven Rose
Version:	PCS S846-CSRL-12 [v.2]		Committee Counsel

SUMMARY: **SB 846 prohibits ordinances and restrictive covenants that prohibit or unreasonably restrict the installation or use of a solar energy system. Entities other than municipalities and counties that willfully do so are liable for damages, a civil penalty of up to $1,000, and the prevailing party in an action for damages is entitled to reasonable attorney's fees.**

BILL ANALYSIS: SB 846 adds a new Chapter 113C to the General Statutes. It provides that it is the policy of the State to encourage solar energy systems and to remove obstacles that prevent their use. A solar energy system is defined as a device or structural design feature the purpose of which is to provide daylight for interior lighting, or to provide solar energy for space heating or cooling, water heating, or electricity generation.

Governing bodies of municipalities and counties may not adopt or enforce ordinances that effectively prohibit or unreasonably restrict solar devices, and restrictive covenants or other private provisions that do so are void. An effective prohibition or unreasonable restriction exists if the cost of the system would be increased by more than 20% or the efficiency of the system would be decreased by more than 20%.

Applications for approval must not be willfully avoided or delayed, and they must be processed and approved in the same manner as an application for approval of an architectural modification.

An entity other than a municipality or county that willfully violates the chapter is liable to the applicant for damages and a civil penalty of up to $1,000. In any action for damages, the prevailing party is awarded costs and attorney's fees.

The act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 846
PROPOSED COMMITTEE SUBSTITUTE S846-CSRL-12 [v.2]

4/16/2003 4:47:48 PM

Short Title: Solar Energy Systems. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT ENCOURAGING THE USE OF SOLAR ENERGY SYSTEMS AND PROHIBITING ORDINANCES, COVENANTS, AND OTHER RESTRICTIONS THAT UNREASONABLY RESTRICT THE INSTALLATION OR USE OF SUCH SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

" Chapter 113C.

"Solar Energy.

"**§ 113C-1. Solar Energy Systems.**

(a) It is the policy of the State to promote and encourage the use of solar energy and to remove obstacles that discourage or prevent the use of such systems.

(b) The following definitions apply in this section:

(1) Significantly. – An amount exceeding twenty percent (20%) of the cost of a solar energy system or decreasing the efficiency of a system by an amount exceeding twenty percent (20%), as originally specified and proposed.

(2) Solar energy system. -- A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or to provide for the collection, storage, conversion, and distribution of solar energy for space heating or cooling, water heating, or electricity generation.

(c) Notwithstanding any other provision of law, no governing body of a municipality or county shall adopt or enforce an ordinance that effectively prohibits or unreasonably restricts the installation or use of a solar energy system. Any covenant, restriction, or other condition contained in any deed, contract, security agreement, or other instrument affecting the transfer or sale of any real property or any interest therein

that effectively prohibits or unreasonably restricts the installation or use of a solar energy system is void and unenforceable. For purposes of this section, an ordinance or covenant, restriction, or other condition effectively prohibits or unreasonably restricts the installation or use of a solar energy system if it significantly increases the cost of a solar energy system or significantly decreases the efficiency or expected performance of a solar energy system.

(d) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the approving entity in the same manner as an application for approval of an architectural modification to the property. Approval shall not be willfully avoided or delayed.

(e) Any person or entity, other than a governing body of a municipality or county, that willfully violates this section shall be liable to the applicant for actual damages resulting from the violation, and the court shall also order the person or entity to pay the applicant a civil penalty in an amount not to exceed one thousand dollars ($1,000). In any action to enforce compliance with this section, the prevailing party shall be awarded costs and reasonable attorney's fees."

SECTION 2. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/22/03

S. B. No. 846 PCS Amendment No. #1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) RAND

Sen.)

1 moves to amend the bill on page 1, line 12

2 ( ) WHICH CHANGES THE TITLE

3 by placing a period at the end of that

4 line,

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6 and on page 1, line 13 by deleting

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SIGNED Tony Rand

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 846
PROPOSED COMMITTEE SUBSTITUTE S846-PCS55180-RL-12

Short Title: Solar Energy Systems. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT ENCOURAGING THE USE OF SOLAR ENERGY SYSTEMS AND PROHIBITING ORDINANCES, COVENANTS, AND OTHER RESTRICTIONS THAT UNREASONABLY RESTRICT THE INSTALLATION OR USE OF SUCH SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 113C.

"Solar Energy.

"**§ 113C-1. Solar energy systems.**

(a) It is the policy of the State to promote and encourage the use of solar energy.

(b) The following definitions apply in this section:

(1) Significantly. – An amount exceeding twenty percent (20%) of the cost of a solar energy system or decreasing the efficiency of a system by an amount exceeding twenty percent (20%), as originally specified and proposed.

(2) Solar energy system. – A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or to provide for the collection, storage, conversion, and distribution of solar energy for space heating or cooling, water heating, or electricity generation.

(c) Notwithstanding any other provision of law, no governing body of a municipality or county shall adopt or enforce an ordinance that effectively prohibits or unreasonably restricts the installation or use of a solar energy system. Any covenant, restriction, or other condition contained in any deed, contract, security agreement, or other instrument affecting the transfer or sale of any real property or any interest therein that effectively prohibits or unreasonably restricts the installation or use of a solar

energy system is void and unenforceable. For purposes of this section, an ordinance or covenant, restriction, or other condition effectively prohibits or unreasonably restricts the installation or use of a solar energy system if it significantly increases the cost of a solar energy system or significantly decreases the efficiency or expected performance of a solar energy system.

(d) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the approving entity in the same manner as an application for approval of an architectural modification to the property. Approval shall not be willfully avoided or delayed.

(e) Any person or entity, other than a governing body of a municipality or county, that willfully violates this section shall be liable to the applicant for actual damages resulting from the violation, and the court shall also order the person or entity to pay the applicant a civil penalty in an amount not to exceed one thousand dollars ($1,000). In any action to enforce compliance with this section, the prevailing party shall be awarded costs and reasonable attorneys' fees."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 750

Short Title:	Increase Permit Limit for Breweries.	(Public)
Sponsors:	Senator Hagan.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CEILING THAT A SMALL BREWERY MAY PRODUCE WITHOUT BEING REQUIRED TO GO THROUGH A MALT BEVERAGE DISTRIBUTOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1104 reads as rewritten:

"**§ 18B-1104. Authorization of brewery permit.**

The holder of a brewery permit may:

(1) Manufacture malt beverages;

(2) Purchase malt, hops and other ingredients used in the manufacture of malt beverages;

(3) Sell, deliver and ship malt beverages in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that malt beverages may be sold to exporters and nonresident wholesalers only when the purchase is not for resale in this State;

(4) Receive malt beverages manufactured by the permittee in some other state for transshipment to dealers in other states;

(5) Furnish or sell marketable malt beverage products, or packages which do not conform to the manufacturer's marketing standards, if State taxes have been or will be paid, to its employees for the use of the employees or their families and guests in this State;

(6) Give its products to its employees and guests for consumption on its premises;

(7) In areas where the sale is legal, sell the brewery's malt beverages at the brewery upon receiving a permit under G.S. 18B-1001(1). The brewery also may obtain a malt beverage wholesaler permit to sell, deliver, and ship at wholesale only malt beverages manufactured by the brewery. The authorization of this subdivision applies to a brewery

that sells, to consumers at the brewery, to wholesalers, to retailers, and to exporters, fewer than ~~310,000 gallons~~ 100,000 barrels of malt beverages produced by it per year.

A sale or gift under subdivision (5) or (6) shall not be considered a retail or wholesale sale under the ABC laws."

SECTION 2. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 750

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S750-ARU-5 [v.1]

Date 4-22 ,2003

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Senator Hagan

moves to amend the bill on page 2, line 2,
by deleting the number "100,000" and substituting the number "50,000".

SIGNED Kay R. Hagan
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

SENATE BILL 750:
Increase Permit Limit for Breweries.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Hagan
Date:	April 15, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 750 would increase the amount of beer a holder of a brewery permit, who sells malt beverages to consumers at the brewery, can sell to consumers at the brewery, to wholesalers, retailers and importers from fewer than 310,000 gallons to fewer than 100,000 barrels.***

CURRENT LAW: Currently a holder of a brewery permit may, where the sale of malt beverages is generally permitted, sell malt beverages at the brewery upon receiving an on-premises malt beverage permit. The brewery can also obtain a wholesale malt beverage permit to sell, deliver and ship at wholesale only malt beverages manufactured by the brewery. These activities are permitted only so long as the brewery sells less than 310,000 gallons of malt beverages per year.

BILL ANALYSIS: The bill would increase the annual limit that a brewery can sell under this arrangement from 310,000 gallons (approximately 9841 barrels) to 100,000 barrels (3,150,000 gallons). The official U.S. definition of a barrel for beer and wine purposes is 31.5 gallons.

EFFECTIVE DATE: The bill becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 769

Short Title:	Beach Plan Homeowners Policy Rate Setting.	(Public)
Sponsors:	Senator Thomas.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH RATE SETTING AND RATE-APPROVAL METHODS FOR THE BEACH PLAN HOMEOWNERS POLICY AND TO PROVIDE INCENTIVES TO BEACH AND COASTAL AREA HOMEOWNERS WHO ESTABLISH AND MAINTAIN RISK PREVENTION AND RISK MITIGATION MEASURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-45-30(d) reads as rewritten:

"(d) As used in this subsection, "homeowners' insurance policy" means a multiperil policy providing full coverage of residential property similar to the coverage provided under an HO-2, HO-3, HO-4, or HO-6 policy under Article 36 of this Chapter. The Association shall issue, for principal residences, homeowners' insurance policies approved by the Commissioner. ~~Homeowners'~~ Subject to underwriting guidelines established by the Association and approved by the Commissioner, homeowners' insurance policies shall be available to persons who reside in the beach and coastal areas and who are unable to obtain homeowners' insurance policies from insurers that are authorized to transact and are actually writing homeowners' insurance policies in this State. The terms and conditions of the homeowners' insurance policies available under this subsection shall not be more favorable than those of homeowners' insurance policies available in the voluntary market in beach and coastal counties. ~~Rates for the homeowners' insurance policies authorized by this subsection shall be set pursuant to rate standards set forth in G.S. 58-40-20(a), and the provisions of G.S. 58-45-45(a) shall not apply.~~"

SECTION 2. G.S. 58-45-35 is amended by adding a new subsection to read:

"(b1) If the Association determines that the property, for which application for a homeowners' policy is made, is insurable, that there is no unpaid premium due from the applicant for prior insurance on the property, and that the underwriting guidelines established by the Association and approved by the Commissioner are met, the

Association, upon receipt of the premium, or part of the premium, as is prescribed in the plan of operation, shall cause to be issued a homeowners' insurance policy."

SECTION 3. G.S. 58-45-45 reads as rewritten:

"**§ 58-45-45. Rates, rating plans, rating rules, and forms applicable.**

(a) Except as provided in subsection (b) of this section, the rates, rating plans, rating rules, and forms applicable to the insurance written by the Association shall be in accordance with the most recent manual rates or adjusted loss costs and forms that are legally in effect in the State. ~~No~~ Except as provided in subsection (c) of this section, no special surcharge, other than those presently in effect, may be applied to the property insurance rates of properties located in the beach area ~~and coastal areas.~~

(b) The rates, rating plans, and rating rules for the separate policies of windstorm and hail insurance described in G.S. 58-45-35(b) shall be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification. The provisions of Articles 40 and 41 of this Chapter shall govern the filings. Policy deductible plans, consistent with G.S. 58-45-1(b), may be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification.

(c) Subject to the filing with and prior approval of the Commissioner of a special surcharge schedule proposed in accordance with guidelines within the plan of operation, the Association may impose special surcharges applicable only to homeowners' policies issued by the Association pursuant to G.S. 58-45-30(d)."

SECTION 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 769

Short Title:	Beach Plan Homeowners Policy Rate Setting.	(Public)
Sponsors:	Senator Thomas.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH RATE SETTING AND RATE-APPROVAL METHODS FOR THE BEACH PLAN HOMEOWNERS POLICY AND TO PROVIDE INCENTIVES TO BEACH AND COASTAL AREA HOMEOWNERS WHO ESTABLISH AND MAINTAIN RISK PREVENTION AND RISK MITIGATION MEASURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-45-30(d) reads as rewritten:

"(d) As used in this subsection, "homeowners' insurance policy" means a multiperil policy providing full coverage of residential property similar to the coverage provided under an HO-2, HO-3, HO-4, or HO-6 policy under Article 36 of this Chapter. The Association shall issue, for principal residences, homeowners' insurance policies approved by the Commissioner. ~~Homeowners'~~ Subject to underwriting guidelines established by the Association and approved by the Commissioner, homeowners' insurance policies shall be available to persons who reside in the beach and coastal areas and who are unable to obtain homeowners' insurance policies from insurers that are authorized to transact and are actually writing homeowners' insurance policies in this State. The terms and conditions of the homeowners' insurance policies available under this subsection shall not be more favorable than those of homeowners' insurance policies available in the voluntary market in beach and coastal counties. ~~Rates for the homeowners' insurance policies authorized by this subsection shall be set pursuant to rate standards set forth in G.S. 58-40-20(a), and the provisions of G.S. 58-45-45(a) shall not apply.~~"

SECTION 2. G.S. 58-45-35 is amended by adding a new subsection to read:

"(b1) If the Association determines that the property, for which application for a homeowners' policy is made, is insurable, that there is no unpaid premium due from the applicant for prior insurance on the property, and that the underwriting guidelines established by the Association and approved by the Commissioner are met, the

Association, upon receipt of the premium, or part of the premium, as is prescribed in the plan of operation, shall cause to be issued a homeowners' insurance policy."

SECTION 3. G.S. 58-45-45 reads as rewritten:

"**§ 58-45-45. Rates, rating plans, rating rules, and forms applicable.**

(a) Except as provided in subsection (b) of this section, the rates, rating plans, rating rules, and forms applicable to the insurance written by the Association shall be in accordance with the most recent manual rates or adjusted loss costs and forms that are legally in effect in the State. ~~No~~ Except as provided in subsection (c) of this section, no special surcharge, other than those presently in effect, may be applied to the property insurance rates of properties located in the beach area ~~and coastal areas.~~

(b) The rates, rating plans, and rating rules for the separate policies of windstorm and hail insurance described in G.S. 58-45-35(b) shall be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification. The provisions of Articles 40 and 41 of this Chapter shall govern the filings. Policy deductible plans, consistent with G.S. 58-45-1(b), may be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification.

(c) Subject to the filing with and prior approval of the Commissioner of a special surcharge schedule proposed in accordance with guidelines within the plan of operation, the Association may impose special surcharges applicable only to homeowners' policies issued by the Association pursuant to G.S. 58-45-30(d)."

SECTION 4. This act is effective when it becomes law.

SENATE BILL 769:
Beach Plan Homeowners Policy Rate Setting

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	Senator Thomas
Date:	April 17, 2003	**Summary by:**	Tim Hovis
Version:	S769-CSRG-10[v.1]		Committee Counsel

BACKGROUND: The North Carolina Insurance Underwriting Association was created in Article 45 of the General Statutes, *Essential Property Insurance for Beach Area Property*, to provide an adequate market for property insurance in the beach and coastal areas of the state. The Association consists of insurers authorized to write property insurance. Members share in the expenses, profits and losses of the Association and receive credit for property insurance written in beach and coastal areas. The Association is popularly known as the Beach Plan.

SUMMARY: Senate Bill 769 makes various changes to the statutes governing rate setting for beach plan homeowners

Section 1 of the bill provides that homeowners' insurance policies under the Beach Plan are subject to underwriting guidelines established by the Association and approved by the Commissioner of Insurance.

Section 2 provides that if the Association determines (1) that a property is insurable; (2) that no unpaid premium is due for prior insurance on the property, and (3) that underwriting guidelines established by the Association and approved by the Commissioner are met, then an applicant must be issued a homeowners' policy under the Beach Plan, upon receipt of the premium in whole or in part.

Section 3 authorizes the Association to impose special surcharges to homeowners' policies issued under the Beach Plan, subject to the prior approval of a special surcharge schedule by the Commissioner.

EFFECTIVE DATE: Senate Bill 769 is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 769
PROPOSED COMMITTEE SUBSTITUTE S769-CSRG-10 [v.3]

4/22/2003 9:33:02 AM

Short Title: Beach Plan Homeowners Policy Rate Setting. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH RATE SETTING AND RATE-APPROVAL METHODS FOR THE BEACH PLAN HOMEOWNERS POLICY, TO PROVIDE INCENTIVES TO BEACH AND COASTAL AREA HOMEOWNERS WHO ESTABLISH AND MAINTAIN RISK PREVENTION AND RISK MITIGATION MEASURES, AND TO EXTEND THE DEADLINE FOR ISSUANCE OF THE HOMEOWNERS POLICY PRODUCT BY THE BEACH PLAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-45-30(d) reads as rewritten:

"(d) As used in this subsection, "homeowners' insurance policy" means a multiperil policy providing full coverage of residential property similar to the coverage provided under an HO-2, HO-3, HO-4, or HO-6 policy under Article 36 of this Chapter. The Association shall issue, for principal residences, homeowners' insurance policies approved by the Commissioner. Homeowners' insurance policies shall be available to persons who reside in the beach and coastal areas who meet the Association's underwriting standards and who are unable to obtain homeowners' insurance policies from insurers that are authorized to transact and are actually writing homeowners' insurance policies in this State. The Association shall file for approval by the Commissioner underwriting standards to determine whether property is insurable. The standards shall reflect underwriting standards commonly used in the voluntary homeowners' insurance business. The terms and conditions of the homeowners' insurance policies available under this subsection shall not be more favorable than those of homeowners' insurance policies available in the voluntary market in beach and coastal counties. ~~Rates for the homeowners' insurance policies authorized by this subsection shall be set pursuant to rate standards set forth in G.S. 58-40-20(a), and the provisions of G.S. 58-45-45(a) shall not apply.~~"

SECTION 2. G.S. 58-45-35 is amended by adding a new subsection to read:

"(b1) If the Association determines that the property, for which application for a homeowners' policy is made, is insurable, that there is no unpaid premium due from the applicant for prior insurance on the property, and that the underwriting guidelines established by the Association and approved by the Commissioner are met, the Association, upon receipt of the premium, or part of the premium, as is prescribed in the plan of operation, shall cause to be issued a homeowners' insurance policy."

SECTION 3. G.S. 58-45-45 reads as rewritten:

"**§ 58-45-45. Rates, rating plans, rating rules, and forms applicable.**

(a) Except as provided in subsection (b) of this section, the rates, rating plans, rating rules, and forms applicable to the insurance written by the Association shall be in accordance with the most recent manual rates or adjusted loss costs and forms that are legally in effect in the State. ~~No~~ Except as provided in subsection (c) of this section, no special surcharge, other than those presently in effect, may be applied to the property insurance rates of properties located in the beach ~~area.~~ and coastal areas.

(b) The rates, rating plans, and rating rules for the separate policies of windstorm and hail insurance described in G.S. 58-45-35(b) shall be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification. The provisions of Articles 40 and 41 of this Chapter shall govern the filings. Policy deductible plans, consistent with G.S. 58-45-1(b), may be filed by the Association with the Commissioner for the Commissioner's approval, disapproval, or modification.

(c) Notwithstanding subsection (a) of this section, the Association may adopt a schedule of special surcharges relating to homeowners' insurance policies issued by the Association pursuant to G. S. 58-45-30(d). Such schedule may reflect any differences in risk that can be demonstrated to have a probable effect on losses or expenses. Notwithstanding subsections (a) and (b) of this section, the provisions of G. S. 58-36-10(1), G. S. 36-15(a), G. S. 58-36-20 and G. S. 58-36-25 shall apply to such filings."

SECTION 3.1. Section 9 of S.L. 2002-185 reads as rewritten:

"Section 9. Part II of this act becomes effective ~~May 1, 2003.~~ July 1, 2003. Part IV of this act becomes effective January 1, 2003. The remainder of this act is effective when it becomes law."

SECTION 4. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4/22/2003

S. B. No. 969 Amendment No. #1

S969-CSRG-10[v.3] (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Hoyle

1 moves to amend the bill on page 2, line 21

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting the line to read:

4 "(c) Notwithstanding subsection (a) of this section,

5 the Association may, subject to the

6 prior approval of the Commissioner, adopt a"

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SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 771

Short Title:	Credit Scoring Limitation.	(Public)
Sponsors:	Senator Thomas.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE USE OF A PERSON'S CREDIT HISTORY FOR DISCOUNTING RATES ON AUTOMOBILE AND HOMEOWNERS' INSURANCE AND TO PROHIBIT THE USE OF A PERSON'S CREDIT HISTORY AS A SOLE BASIS FOR TERMINATING INSURANCE COVERAGE, CEDING AN AUTOMOBILE INSURANCE POLICY TO THE REINSURANCE FACILITY, OR SUBJECTING A POLICY TO CONSENT TO RATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-90. Prohibitions on using credit scoring to rate nonfleet private passenger motor vehicle and residential property insurance; exceptions.**

(a) Definitions. – As used in this section:

(1) "Adverse Action" has the same meaning as in section 1681a(k) of the federal Fair Credit Reporting Act and including a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of any insurance, existing or applied for, in connection with the underwriting of insurance.

(2) "Credit report" means any written, oral, or other communication of any information by a consumer reporting agency that bears on a consumer's credit worthiness, credit standing, or credit capacity. Credit report does not include accident or traffic violation records as maintained by the North Carolina Division of Motor Vehicles or any other law enforcement agency, a property loss report or claims history that does not include information that bears on a consumer's credit worthiness, credit standing, or credit capacity, or any report containing information solely as to transactions or experiences between the consumer and the person making the report.

(3) "Credit score" means a score that is derived by utilizing data from an individual's credit report in an algorithm, computer program, model, or other process that reduces the data to a number or rating.

(4) "Private passenger motor vehicle" has the same meaning as set forth in G.S. 58-40-10.

(5) "Residential property" means real property with not more than four housing units located in this State, the contents thereof and valuable interest therein, and insurance coverage written in connection with the sale of that property. It also includes mobile homes, modular homes, townhomes, condominiums, and insurance on contents of apartments and rental property used for residential purposes.

(b) Prohibitions; Exceptions. – In the rating and underwriting of private passenger motor vehicle and residential property insurance coverage, insurers shall not use credit scoring as the sole basis for any of the following:

(1) Terminating an existing policy or any coverage in an existing policy.

(2) Ceding motor vehicle liability coverage to the North Carolina Motor Vehicle Reinsurance Facility.

(3) Subjecting a policy to consent to rate, as specified in G.S. 58-36-30(b).

For the rating and underwriting of private passenger motor vehicle and residential property insurance coverage, credit scoring may be used only to discount rates.

(c) Notification. – If a credit report is used in conjunction with other criteria to take an adverse action, the insurer shall provide the applicant or policyholder with written notice of the action taken, in a form approved by the Commissioner. The notification shall include, in easily understandable language:

(1) The specific reason for the adverse action and, if the adverse action was based upon a credit score, a description of the factors that were the primary influence on the score.

(2) The name, address, and toll-free telephone number of the credit bureau that provided the insurer with the credit-based information.

(3) The fact that the consumer has the right to obtain a free copy of the consumer's credit report from the appropriate credit bureau.

(4) The fact that the consumer has the right to challenge information contained in the consumer's credit report.

(d) Disputed Credit Report Information. – An applicant or policyholder who disputes the credit report information used with other criteria by the insurer to take an adverse action against the applicant or policyholder shall have the rights afforded an individual under G.S. 58-39-50. The Commissioner may enforce the provisions of this section by all means allowed by law, including the authority granted in G.S. 58-39-70. For purposes of the operation of this subsection, credit report information shall constitute "recorded personal information".

(e) Filing. – Insurers that use insurance scores to underwrite and rate risks shall file their scoring models, or other scoring processes, with the Department. A filing that includes insurance scoring may include loss experience justifying the applicable

surcharge or credit. A filer may request that its credit score data be considered a trade secret and may designate parts of its filings accordingly."

SECTION 2. This act becomes effective January 1, 2004, and applies to policies issued or renewed on or after that date and to applications for coverage made on or after that date.

SENATE BILL 771:
Credit Scoring Limitation

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	Senator Thomas
Date:	April 17, 2003	**Summary by:**	Tim Hovis
Version:	S771-CSRG-9[v.1.]		Committee Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 771 would regulate the use of "credit scoring" by insurers. Credit scoring is the practice of reducing data from an individual's credit report to a number or rating. The bill prohibits the use of "credit scoring" as the sole basis for terminating or reducing coverage in an existing passenger motor vehicle or residential property policy, or as the sole basis for subjecting a policy to consent to rate. The bill allows the use of credit scoring to discount rates.

The bill also requires insurers to provide notice to applicants or policyholders if a credit report is used to take an "adverse action." Adverse action is defined under the bill as the denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of insurance.

BILL ANALYSIS: Credit score is defined under the bill as "a score that is derived from an individual's credit report in an algorithm, computer program, model, or other process that reduces the data to a number or rating."

The bill specifically prohibits private passenger motor vehicle and residential property insurers from using credit scoring as the sole basis to:

- Terminate an existing policy or any coverage in an existing policy.
- Subject a policy to consent to rate. "Consent to rate" is the process by which an insurer may charge a rate in excess of the rate promulgated by the Rate Bureau with the written consent of the insured.

Credit scoring may be used to discount rates.

Senate Bill 771 also provides that, if a credit report is used with other criteria to take an adverse action (as defined above), the insurer must provide an applicant or policyholder with written notice of the action taken. The notification must include the following:

- The reason for the action, including factors primarily influencing a credit score if the action was based upon a credit score.
- The name address, and toll-free telephone of the credit bureau providing the information.
- The fact that the consumer has the right to obtain a free copy of his or her credit report.
- The fact that the consumer has the right to challenge information in his or her credit report.

An applicant or policyholder who disputes information in a credit report may request that an insurer correct the information. An insurer must then correct the information or notify the individual of the reasons for its refusal to do so.

The Commissioner of Insurance is authorized to investigate violations of and enforce this section.

EFFECTIVE DATE: Senate Bill 771 would become effective January 1, 2004 and would apply to policies issued or renewed on or after that date and to applications made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 771
PROPOSED COMMITTEE SUBSTITUTE S771-CSRG-9 [v.1]

4/16/2003 6:45:46 PM

Short Title: Credit Scoring Limitation. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE USE OF A PERSON'S CREDIT HISTORY FOR DISCOUNTING RATES ON AUTOMOBILE AND HOMEOWNERS' INSURANCE AND TO PROHIBIT THE USE OF A PERSON'S CREDIT HISTORY AS A SOLE BASIS FOR TERMINATING INSURANCE COVERAGE OR SUBJECTING A POLICY TO CONSENT TO RATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-90. Prohibitions on using credit scoring to rate nonfleet private passenger motor vehicle and residential property insurance; exceptions.**

(a) Definitions. – As used in this section:

(1) "Adverse Action" has the same meaning as in section 1681a(k) of the federal Fair Credit Reporting Act and including a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of any insurance, existing or applied for, in connection with the underwriting of insurance.

(2) "Credit report" means any written, oral, or other communication of any information by a consumer reporting agency that bears on a consumer's credit worthiness, credit standing, or credit capacity. Credit report does not include accident or traffic violation records as maintained by the North Carolina Division of Motor Vehicles or any other law enforcement agency, a property loss report or claims history that does not include information that bears on a consumer's credit worthiness, credit standing, or credit capacity, or any report containing information solely as to transactions or experiences between the consumer and the person making the report.

(3) "Credit score" means a score that is derived by utilizing data from an individual's credit report in an algorithm, computer program, model, or other process that reduces the data to a number or rating.

(4) "Private passenger motor vehicle" has the same meaning as set forth in G.S. 58-40-10.

(5) "Residential property" means real property with not more than four housing units located in this State, the contents thereof and valuable interest therein, and insurance coverage written in connection with the sale of that property. It also includes mobile homes, modular homes, townhomes, condominiums, and insurance on contents of apartments and rental property used for residential purposes.

(b) Prohibitions; Exceptions. – In the rating and underwriting of private passenger motor vehicle and residential property insurance coverage, insurers shall not use credit scoring as the sole basis for either of the following:

(1) Terminating an existing policy or any coverage in an existing policy.

(2) Subjecting a policy to consent to rate, as specified in G.S. 58-36-30(b).

For the rating and underwriting of private passenger motor vehicle and residential property insurance coverage, credit scoring may be used only to discount rates.

(c) Notification. – If a credit report is used in conjunction with other criteria to take an adverse action, the insurer shall provide the applicant or policyholder with written notice of the action taken, in a form approved by the Commissioner. The notification shall include, in easily understandable language:

(1) The specific reason for the adverse action and, if the adverse action was based upon a credit score, a description of the factors that were the primary influence on the score.

(2) The name, address, and toll-free telephone number of the credit bureau that provided the insurer with the credit-based information.

(3) The fact that the consumer has the right to obtain a free copy of the consumer's credit report from the appropriate credit bureau.

(4) The fact that the consumer has the right to challenge information contained in the consumer's credit report.

(d) Disputed Credit Report Information. – An applicant or policyholder who disputes the credit report information used with other criteria by the insurer to take an adverse action against the applicant or policyholder shall have the rights afforded an individual under G.S. 58-39-50. The Commissioner may enforce the provisions of this section by all means allowed by law, including the authority granted in G.S. 58-39-70. For purposes of the operation of this subsection, credit report information shall constitute "recorded personal information".

(e) Filing. – Insurers that use insurance scores to underwrite and rate risks shall file their scoring models, or other scoring processes, with the Department. A filing that includes insurance scoring may include loss experience justifying the applicable surcharge or credit. A filer may request that its credit score data be considered a trade secret and may designate parts of its filings accordingly."

SECTION 2. This act becomes effective January 1, 2004, and applies to policies issued or renewed on or after that date and to applications for coverage made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 801

Short Title: Prohibited Telecommunications Agreements. (Public)

Sponsors: Senator Hoyle.

Referred to: Commerce.

April 3, 2003

A BILL TO BE ENTITLED

AN ACT PROHIBITING EXCLUSIVE TELECOMMUNICATIONS SERVICE PROVIDER AGREEMENTS OR ARRANGEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 15 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-328. Exclusive telecommunications service provider agreements prohibited.**

(a) No telecommunications service provider regulated by the Utilities Commission or any parent company, subsidiary, or affiliate of such a provider shall enter into any contract, agreement, or arrangement, oral or written, with any person or entity that explicitly or effectively does or seeks to do any of the following:

(1) Restrict or limit the ability of any other telecommunications service provider regulated by the Utilities Commission from obtaining easements or rights-of-way for the installation of facilities or equipment to provide telecommunications services in this State.

(2) Offers or grants incentives or rewards to an owner of real property or the owner's agent to encourage the owner or agent to refuse or restrict access to the real property by any other telecommunications service provider.

(b) Nothing in this section shall prohibit a user or prospective user of telecommunications service from entering into a lawful agreement with a telecommunications service provider with respect to the user or prospective user's own telecommunications service.

(c) Any telecommunications service provider who violates this section shall be subject to proceedings brought under this Chapter as well as any other civil and criminal actions authorized under the laws of this State for such a violation. Each day that a contract, agreement, or arrangement prohibited by this section remains in force or effect shall constitute a separate offense and each offense shall be punishable by a fine of not less than five hundred dollars ($500.00) and not more than five thousand dollars

($5,000). An intentional violation of this section is hereby declared to be in violation of G.S. 75-1.1."

SECTION 2. This act is effective when it becomes law.

SB 801:
Investigate Certain Telecom. Activities

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Sen. Hoyle
Date:	April 22, 2003	**Summary by:**	Steven Rose
Version:	PCS S801-CSRL-16 [v.4]		Committee Counsel

SUMMARY: ***The proposed committee substitute for SB 801 requires the North Carolina Utilities Commission to investigate whether telecommunications providers are restricting or causing others to restrict the ability of other telecommunications providers to obtain easements for the purpose of installing equipment that would allow them to offer their own telecommunications services to potential customers.***

The Commission must report back to the Joint Legislative Utility Review Committee within 90 days of the effective date of the act on the following:

1. ***Whether such activities are occurring.***
2. ***The steps the Commission has taken or will take to correct the situation.***
3. ***Whether additional legislation is needed to empower the Commission to deal with the situation.***

The act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 801
PROPOSED COMMITTEE SUBSTITUTE S801-CSRL-16 [v.5]

4/22/2003 9:52:54 AM

Short Title: Investigate Certain Telecom. Activities (Local)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT REQUIRING THE UTILITIES COMMISSION TO INVESTIGATE EXCLUSIVE TELECOMMUNICATIONS SERVICE PROVIDER AGREEMENTS OR ARRANGEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Utilities Commission shall investigate whether telecommunications service providers regulated by the Utilities Commission are (i) unreasonably restricting or limiting the ability of other telecommunications service providers regulated by the Utilities Commission from obtaining easements or rights-of-way for the installation of facilities or equipment to provide telecommunications services in this State, or (ii) offering or granting incentives or rewards to owners of real property or owners' agents to encourage the owners or agents to refuse or restrict access to real property by other telecommunications services providers.

SECTION 2. Not later than 90 days from the effective date of this act, the Utilities Commission shall report the following to the Joint Legislative Utility Review Committee:

(1) Whether the activities described in Section 1 of this act are occurring.

(2) If the activities described in Section 1 of this act are occurring, the steps the Utilities Commission has taken, or will take, to address these occurrences.

(3) Whether additional legislation is necessary to allow the Utilities Commission to address the occurrence of activities described in Section 1 of this act, or to prevent their occurrence in the future.

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 801
PROPOSED COMMITTEE SUBSTITUTE S801-PCS55179-RL-16

Short Title: Investigate Certain Telecom. Activities. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT REQUIRING THE UTILITIES COMMISSION TO INVESTIGATE EXCLUSIVE TELECOMMUNICATIONS SERVICE PROVIDER AGREEMENTS OR ARRANGEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Utilities Commission shall investigate whether telecommunications service providers regulated by the Utilities Commission are (i) unreasonably restricting or limiting the ability of other telecommunications service providers regulated by the Utilities Commission from obtaining easements or rights-of-way for the installation of facilities or equipment to provide telecommunications services in this State or (ii) offering or granting incentives or rewards to owners of real property or owners' agents to encourage the owners or agents to refuse or restrict access to real property by other telecommunications service providers.

SECTION 2. Not later than 90 days from the effective date of this act, the Utilities Commission shall report the following to the Joint Legislative Utility Review Committee:

(1) Whether the activities described in Section 1 of this act are occurring.

(2) If the activities described in Section 1 of this act are occurring, the steps the Utilities Commission has taken, or will take, to address these occurrences.

(3) Whether additional legislation is necessary to allow the Utilities Commission to address the occurrence of activities described in Section 1 of this act or to prevent their occurrence in the future.

SECTION 3. This act is effective when it becomes law.

SENATE BILL 887:
Ovarian Cancer Det./High Risk Women

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senators Carpenter, Dannelly, Purcell
Date:	April 21, 2003		
Version:	Proposed Committee Substitute S887-CSRC-32[v.2]	**Summary by:**	Kory J. Goldsmith Committee Counsel

SUMMARY: ***SB887 would require every health benefit plan and every standard health care plan for small employers to include coverage for surveillance tests for women age 25 and older who are at risk of ovarian cancer. The act becomes effective January 1, 2004 and applies to all health benefit plans delivered, issued for delivery, or renewed on and after that date.***

CURRENT LAW: There is no current statutory requirement that health plans include coverage for surveillance tests for ovarian cancer. However, the standard health plan for small employers is required to include coverage for Mammograms, pap smears, prostate-specific antigen tests and colorectal cancer examinations and laboratory tests. Health benefit plans as defined under G.S. 58-3-167 are required to include coverage for colorectal cancer examinations and laboratory tests for cancer.

A health benefit plan as defined in G.S. 58-3-167 means an accident and health insurance policy; a non-profit hospital or medical service corporation contract; a health maintenance organization subscriber contract, a plan provided by a multiple employer welfare arrangement, or a plan provided by another benefit arrangement, to the extent permitted by the ERISA. It does not include any plan implemented or administered by the State of North Carolina or the United States Department of Health and Human Services.

The standard health care plan for small employers is a health benefit plan developed under Article 50, Part 5 of Chapter 58. A small employer is an employer that employs no more than 50 eligible employees, the majority of whom are employed within North Carolina.

BILL ANALYSIS:

Section 1 requires health benefit plans as defined in G.S. 58-3-167 to provide coverage for surveillance tests for women age 25 and older who are at risk of ovarian cancer. Surveillance tests means annual screening using transvaginal ultrasound and rectovaginal pelvic examination. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the plan would apply to coverage for transvaginal ultrasound and rectovaginal pelvic examination.

A woman is at risk for ovarian cancer if she has a family history of ovarian cancer or she tests positive for hereditary ovarian cancer syndrome. A women has a family history of ovarian cancer if she has at least one first –degree relative with ovarian cancer and at least one first-degree or second-degree relative with breast, ovarian, or nonpolyposis colorectal cancer. The bill does not define "herediatary ovarian cancer syndrome." However, medical literature identifies three hereditary syndromes that predispose to ovarian cancer: 1. the breast-ovarian cancer syndrome due to mutations in the tumor suppressor genes BRCA1 and BRCA2, 2. Lynch syndrome II, and 3. hereditary site specific ovarian cancer.

Section 2 requires that the standard health plan for small employers provide coverage for surveillance tests for women at risk for ovarian cancer. The same terms and requirements of Section 1 would apply.

BACKGROUND: Five to ten percent of individuals who develop ovarian cancer have an inherited genetic susceptibility to the disease. Generally, the risk of developing ovarian cancer increases as the number of family members affected by ovarian cancer increases. Having a first-degree relative affected by ovarian cancer (for example, a mother or a sister) increases a woman's lifetime risk from 1.4% to 3.1%. Those at greatest risk for inherited genetic susceptibility have a personal or family history of ovarian and/or breast cancer.

S887-SMRC-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 887
PROPOSED COMMITTEE SUBSTITUTE S887-CSRC-32 [v.2]

4/21/2003 7:55:00 PM

Short Title: Ovarian Cancer Det./High Risk Women. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO MANDATE INSURANCE COVERAGE FOR SURVEILLANCE TESTS FOR WOMEN AGE TWENTY-FIVE AND OLDER AND AT RISK FOR OVARIAN CANCER.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 58 is amended by adding the following new section:

"**§ 58-3-266. Coverage for surveillance tests for women at risk for ovarian cancer.**

(a) Every health benefit plan, as defined in G.S. 58-3-167, shall provide coverage for surveillance tests for women age 25 and older at risk for ovarian cancer. As used in this section:

(1) 'At risk for ovarian cancer' means either:

a. Having a family history:

1. With at least one first-degree relative with ovarian cancer; and

2. At least one first-degree or second-degree relative with breast, ovarian, or nonpolyposis colorectal cancer; or

b. Testing positive for a hereditary ovarian cancer syndrome.

(2) 'Surveillance tests' mean annual screening using:

a. Transvaginal ultrasound; and

b. Rectovaginal pelvic examination.

(b) The same deductibles, coinsurance, and other limitations as apply to similar services covered under the plan apply to coverage for transvaginal ultrasound and rectovaginal pelvic examinations required to be covered under this section."

SECTION 2. G.S. 58-50-155 reads as rewritten:

"**§ 58-50-155. Standard and basic health care plan coverages.**

(a) Notwithstanding G.S. 58-50-125(c), the standard health plan developed and approved under G.S. 58-50-125 shall provide coverage for all of the following:

(1) Mammograms and pap smears at least equal to the coverage required by G.S. 58-51-57.

(2) Prostate-specific antigen (PSA) tests or equivalent tests for the presence of prostate cancer at least equal to the coverage required by G.S. 58-51-58.

(3) Reconstructive breast surgery resulting from a mastectomy at least equal to the coverage required by G.S. 58-51-62.

(4) For a qualified individual, scientifically proven bone mass measurement for the diagnosis and evaluation of osteoporosis or low bone mass at least equal to the coverage required by G.S. 58-3-174.

(5) Prescribed contraceptive drugs or devices that prevent pregnancy and that are approved by the United States Food and Drug Administration for use as contraceptives, or outpatient contraceptive services at least equal to the coverage required by G.S. 58-3-178, if the plan covers prescription drugs or devices, or outpatient services, as applicable. The same exceptions and exclusions as are provided under G.S. 58-3-178 apply to standard plans developed and approved under G.S. 58-50-125.

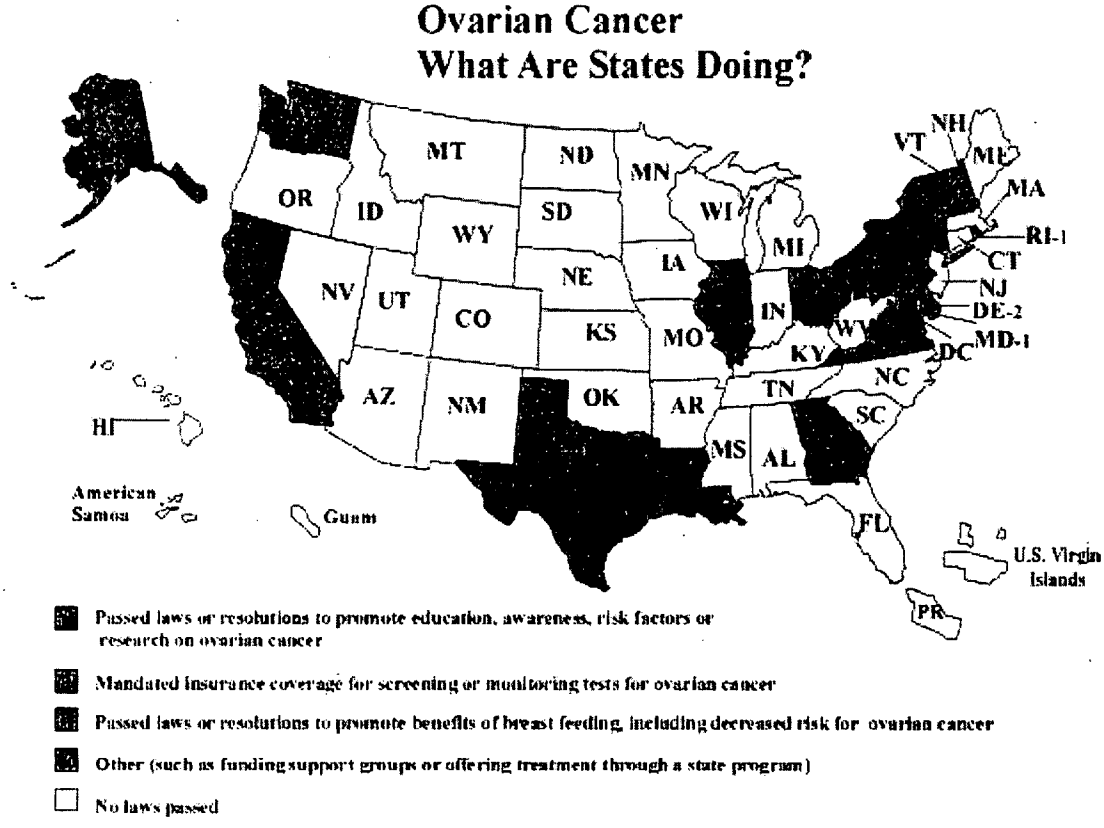
(6) Colorectal cancer examinations and laboratory tests at least equal to the coverage required by G.S. 58-3-179.

(7) Surveillance tests at least equal to coverage required by G.S. 58-3-266.

(a1), (a2) Repealed by Session Laws 1999-197, s. 2.

(b) Notwithstanding G.S. 58-50-125(c), in developing and approving the plans under G.S. 58-50-125, the Committee and Commissioner shall give due consideration to cost-effective and life-saving health care services and to cost-effective health care providers."

SECTION 3. This act becomes effective January 1, 2004, and applies to all health benefit plans that are delivered, issued for delivery, or renewed on and after that date. For the purposes of this act, renewal of a health benefit plan is presumed to occur on each anniversary of the date on which coverage was first effective on the person or persons covered by the health benefit plan.



Ovarian Cancer

- In 2002, an estimated 23,300 women in the United States will be diagnosed with ovarian cancer and about 13,900 will die.
- A woman's chances of having ovarian cancer are increased if she has a strong family history, meaning she has one or more close relatives (mother, daughter or sister) who has been diagnosed with ovarian cancer.
- Ovarian cancer is most treatable when diagnosed early; however, it is difficult to detect early. Only 26 percent of all cases are diagnosed at the earliest stage. About 60 percent of all cases are not diagnosed until the cancer has spread beyond the abdominal cavity, when the five-year relative survival rate is only about 30 percent.
- At this time, no reliable screening tools are available to detect ovarian cancer in its earliest stages. However, tests such as CA125 currently are being evaluated as a screening tool. CA125, a tumor marker, can detect high elevations of substances in the blood that result from a tumor.
- State lawmakers can address ovarian cancer by supporting and funding awareness activities, screening and diagnosis research, and treatment programs.

Sources: CDC's Division of Cancer Prevention and Control, American Cancer Society and

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 887
PROPOSED COMMITTEE SUBSTITUTE S887-PCS65272-RC-32

Short Title: Ovarian Cancer Det./High Risk Women. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO MANDATE INSURANCE COVERAGE FOR SURVEILLANCE TESTS FOR WOMEN AGE TWENTY-FIVE AND OLDER AND AT RISK FOR OVARIAN CANCER.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 58 is amended by adding the following new section:

"**§ 58-3-266. Coverage for surveillance tests for women at risk for ovarian cancer.**

(a) Every health benefit plan, as defined in G.S. 58-3-167, shall provide coverage for surveillance tests for women age 25 and older at risk for ovarian cancer. As used in this section:

(1) 'At risk for ovarian cancer' means either:

a. Having a family history:

1. With at least one first-degree relative with ovarian cancer; and

2. At least one first-degree or second-degree relative with breast, ovarian, or nonpolyposis colorectal cancer; or

b. Testing positive for a hereditary ovarian cancer syndrome.

(2) 'Surveillance tests' mean annual screening using:

a. Transvaginal ultrasound; and

b. Rectovaginal pelvic examination.

(b) The same deductibles, coinsurance, and other limitations as apply to similar services covered under the plan apply to coverage for transvaginal ultrasound and rectovaginal pelvic examinations required to be covered under this section."

SECTION 2. G.S. 58-50-155 reads as rewritten:

"**§ 58-50-155. Standard and basic health care plan coverages.**

(a) Notwithstanding G.S. 58-50-125(c), the standard health plan developed and approved under G.S. 58-50-125 shall provide coverage for all of the following:

(1) Mammograms and pap smears at least equal to the coverage required by G.S. 58-51-57.

(2) Prostate-specific antigen (PSA) tests or equivalent tests for the presence of prostate cancer at least equal to the coverage required by G.S. 58-51-58.

(3) Reconstructive breast surgery resulting from a mastectomy at least equal to the coverage required by G.S. 58-51-62.

(4) For a qualified individual, scientifically proven bone mass measurement for the diagnosis and evaluation of osteoporosis or low bone mass at least equal to the coverage required by G.S. 58-3-174.

(5) Prescribed contraceptive drugs or devices that prevent pregnancy and that are approved by the United States Food and Drug Administration for use as contraceptives, or outpatient contraceptive services at least equal to the coverage required by G.S. 58-3-178, if the plan covers prescription drugs or devices, or outpatient services, as applicable. The same exceptions and exclusions as are provided under G.S. 58-3-178 apply to standard plans developed and approved under G.S. 58-50-125.

(6) Colorectal cancer examinations and laboratory tests at least equal to the coverage required by G.S. 58-3-179.

(7) Surveillance tests at least equal to coverage required by G.S. 58-3-266.

(a1), (a2) Repealed by Session Laws 1999-197, s. 2.

(b) Notwithstanding G.S. 58-50-125(c), in developing and approving the plans under G.S. 58-50-125, the Committee and Commissioner shall give due consideration to cost-effective and life-saving health care services and to cost-effective health care providers."

SECTION 3. This act becomes effective January 1, 2004, and applies to all health benefit plans that are delivered, issued for delivery, or renewed on and after that date. For the purposes of this act, renewal of a health benefit plan is presumed to occur on each anniversary of the date on which coverage was first effective on the person or persons covered by the health benefit plan.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 887

Short Title:	Ovarian Cancer Det./High Risk Women.	(Public)
Sponsors:	Senators Carpenter, Dannelly, Purcell; Brock and Queen.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO MANDATE INSURANCE COVERAGE FOR SURVEILLANCE TESTS FOR WOMEN AGE TWENTY-FIVE AND OLDER AND AT RISK FOR OVARIAN CANCER.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 58 is amended by adding the following new section:

"**§ 58-3-266. Coverage for surveillance tests for women at risk for ovarian cancer.**

(a) Every health benefit plan, as defined in G.S. 58-3-167, shall provide coverage for surveillance tests for women age 25 and older at risk for ovarian cancer. As used in this section:

(1) "At risk for ovarian cancer" means either:

a. Having a family history:

1. With at least one first-degree relative with ovarian cancer; and

2. At least one first-degree or second-degree relative with breast, ovarian, or nonpolyposis colorectal cancer; or

b. Testing positive for a hereditary ovarian cancer syndrome.

(2) "Surveillance tests" mean annual screening using:

a. CA-125 serum tumor market testing;

b. Transvaginal ultrasound; and

c. Rectovaginal pelvic examination.

The same deductibles, coinsurance, and other limitations as apply to similar services covered under the plan apply to coverage for colorectal examinations and laboratory tests required to be covered under this section."

SECTION 2. G.S. 58-50-155 reads as rewritten:

"**§ 58-50-155. Standard and basic health care plan coverages.**

(a) Notwithstanding G.S. 58-50-125(c), the standard health plan developed and approved under G.S. 58-50-125 shall provide coverage for all of the following:

(1) Mammograms and pap smears at least equal to the coverage required by G.S. 58-51-57.
(2) Prostate-specific antigen (PSA) tests or equivalent tests for the presence of prostate cancer at least equal to the coverage required by G.S. 58-51-58.
(3) Reconstructive breast surgery resulting from a mastectomy at least equal to the coverage required by G.S. 58-51-62.
(4) For a qualified individual, scientifically proven bone mass measurement for the diagnosis and evaluation of osteoporosis or low bone mass at least equal to the coverage required by G.S. 58-3-174.
(5) Prescribed contraceptive drugs or devices that prevent pregnancy and that are approved by the United States Food and Drug Administration for use as contraceptives, or outpatient contraceptive services at least equal to the coverage required by G.S. 58-3-178, if the plan covers prescription drugs or devices, or outpatient services, as applicable. The same exceptions and exclusions as are provided under G.S. 58-3-178 apply to standard plans developed and approved under G.S. 58-50-125.
(6) Colorectal cancer examinations and laboratory tests at least equal to the coverage required by G.S. 58-3-179.
(7) Surveillance tests at least equal to coverage required by G.S. 58-3-266.

(a1), (a2) Repealed by Session Laws 1999-197, s. 2.

(b) Notwithstanding G.S. 58-50-125(c), in developing and approving the plans under G.S. 58-50-125, the Committee and Commissioner shall give due consideration to cost-effective and life-saving health care services and to cost-effective health care providers."

SECTION 3. This act becomes effective January 1, 2004, and applies to all health benefit plans that are delivered, issued for delivery, or renewed on and after that date. For the purposes of this act, renewal of a health benefit plan is presumed to occur on each anniversary of the date on which coverage was first effective on the person or persons covered by the health benefit plan.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 22, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Sox	NCRMA
Bill Stemmill	Red Oak
John Peterson	NCINS
ANN LORE	DVHS
CLYDIA JACKSON, RN	NCNA - RALEIGH, NC
Ken Melton	Alley Associates
Tom Coley	CWA
SUSAN SMITH	NC CWA POLITICAL COUNCIL
Doris Weaver	11
Bernard Cox	DOI
PERRI MORGAN	NFIB
Mike Lewis Connie Stall	GSK Kennedy Covington

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 22, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leslie Bevacqua	WCCBL
Kiki Dunton	NCPIRG
Joey Ciamfortoni	Schering-Plough
Bill Hale	Jordan Price Law Firm
Cam Ayer	BMHL
Erin Culbreth	LBA
Mona Mansbach	Pozen Inc

AGENDA

SENATE COMMERCE COMMITTEE
Thursday, April 24, 2003 at 11:00 AM
Room 1027, Legislative Building

Welcome and Opening Remarks

Bills to be Considered

SB 378	311 Service.	Senator Dannelly
SB 632	Workers' Comp./Agricultural Employment.	Senator Clodfelter
SB 670	Creditable Service/Workers' Compensation.	Senator Hartsell
SB 963	Prevent Price Gouging During Disasters.	Senator Swindell
SB 991	Consumer's Right to Know and Act.	Senator Reeves

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Thursday, April 24, 2003 at 11:00 a.m.
Room 1027, Legislative Building
MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Thursday, April 24, 2003, in Room 1027 of the Legislative Building. Twelve members of the committee were present. Senator R. C. Soles, Jr., presided. He asked for a moment of silence in memory of former senator Ed Warren who had chaired the Senate Commerce Committee before Senator Soles took it over. Senator Warren died this morning.

Senator Soles introduced the pages: Jim Williams of Greensboro, sponsored by Senator Katie Dorsett; and Keith Gordon of Belmont, sponsored by Senator David Hoyle.

Senator A. B. Swindell was introduced to explain SB 963, Prevent Price Gouging During Disasters. Mr. Andy Ellen, representing the North Carolina Retail Merchant's Association spoke on the bill and commended Senator Swindell for working with the Association to make the bill fair to the retail merchants. Discussion will continue as the bill moves through the legislative process. Senator Apadoca moved a favorable report of the bill. The motion carried.

Senator Charlie Dannelly was introduced to explain SB 378, 311 Service. Mr. Richard Taylor, a state employee, but speaking as a representative of the National Emergency Number Association, expressed concern about the bill taking needed resources away from the 911 emergency number. Senator Carpenter moved a favorable report of the bill. The motion carried.

Senator Dan Clodfelter was recognized to explain SB 632, Workers Compensation/Agricultural Employment. Several people were present to express their views on the bill. They included:

- Mr. Bill Bryan, representing the Mount Olive Pickle Company – for
- Mr. Stan Eury, representing the North Carolina Growers Association – for
- Mr. Hugh Tilson, representing the North Carolina Hospital Association – for
- Mr. Dick Taylor, representing the North Carolina Trial Lawyers Association – for
- Mr. Esteban Echeverria, representing the Student Action with Farmworkers - for
- Ms. Paula Gupton Page, representing the North Carolina Farm Bureau - against

Others in attendance indicated their support of the bill: Ms. Ann Lore, representing Duke University Hospital Systems; Ms. Andrea Bazan Manson, representing El Pueblo, Inc.; Ms. Carol Brook, representing the North Carolina Justice and Community Development Center; and Mr. Ivan Parra, representing the North Carolina Latino Community Development Center. No vote was taken on the bill.

Senator Soles announced that he planned to remove SB 670, Creditable Service/Workers' Compensation from the Commerce Committee and send it to the Pensions & Retirement and Aging Committee

The meeting adjourned at 12:00 noon without considering SB 991 at the sponsor's request.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Thursday, April 24, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **378** 311 Service.
Sequential Referral: None
Recommended Referral: None

S.B. **963** Prevent Price Gouging During Disasters.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **769** Beach Plan Homeowners Policy Rate Setting.
Draft Number: PCS 40029
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **801** Prohibited Telecommunications Agreements.
Draft Number: PCS 55179
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 963

Short Title:	Prevent Price Gouging During Disasters.	(Public)
Sponsors:	Senators Swindell; Apodaca, Gulley, Jenkins, Lucas, Metcalf, Moore, Pittenger, Rand, Reeves, and Thomas.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT SELLERS FROM EXCESSIVELY RAISING PRICES ON THEIR MERCHANDISE DURING DECLARED STATES OF DISASTER.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-36. Prohibit excessive pricing during states of disaster.**

(a) It shall be unlawful for any person to sell or offer to sell during a state of disaster or within 30 days of the termination of a state of disaster, in the area for which the state of disaster has been declared, any merchandise which is consumed or used as a direct result of an emergency or which is consumed or used to preserve, protect, or sustain life, health, safety, or comfort of persons or their property for a price that constitutes an excessive price increase.

(b) As used in this section, the following mean:

(1) Excessive price increase. – A price that is excessive as compared to the price at which the consumer good or service was sold or offered for sale by the seller in the usual course of business immediately prior to the state of disaster. A price shall be deemed excessive if either of the following conditions applies:

a. The price exceeds by more than ten percent (10%) the price at which the good or service was sold or offered for sale by the seller in the usual course of business immediately prior to the state of disaster, unless the price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the state of disaster.

b. In those situations where the increase in price is attributable to additional costs imposed by the seller's supplier or additional

costs of providing the good or service during the state of disaster, the price represents an increase of more than ten percent (10%) in the amount of the markup from cost, compared to the markup customarily applied by the seller in the usual course of business immediately prior to the state of disaster.

(2) State of disaster. – A natural or man-made disaster or emergency as declared in accordance with G.S. 166A-6 or G.S. 166A-8."

SECTION 2. This act becomes effective July 1, 2003.

SENATE BILL 963:
Prevent Price Gouging During Disasters.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Swindell
Date:	April 24, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 963 would restrict merchants from selling essential goods at excessive prices during declared states of disaster. The bill would limit price increases during disasters to 10% of the pre-disaster price or a 10% additional markup if the merchant's costs for obtaining the goods during a disaster are higher. Violation of this bill would be considered an unfair trade practice under Chapter 75 and would subject the violator to fines, treble damages and attorneys fees.***

CURRENT LAW: Current law does not control or restrict prices that may be charged for goods during disasters. The Governor and General Assembly are authorized to declare states of disaster under G.S. 166A-6, which can include a determination of the length of the disaster period and the geographic location to which the state of disaster applies. Local governments are allowed to declare local states of emergency.

BILL ANALYSIS: Senate Bill 963 would make it unlawful for a person, during a declared state of disaster or 30 days thereafter, to sell any merchandise that is consumed or used as a direct result of an emergency, or which is consumed or used to preserve, protect or to sustain life, health, safety or comfort of people or their property during a state of disaster at an excessive price.

The bill defines "excessive price" as the price at which the good or service is sold or offered during the disaster period as compared to the price the good or service was sold for immediately prior to the disaster, that exceeds the original price by more than 10%. If the cost of the good or service is higher because of higher prices imposed by the seller's supplier or additional costs of providing the good or service during the disaster, the price may not be more than a 10% markup above the normal markup for the good or service immediately prior to the disaster.

The bill defines a state of disaster as one declared by the Governor or General Assembly under G.S. 160A-6 or a local emergency declaration under G.S. 160A-8.

By being codified as part of Article 1 of Chapter 75, a violation of this bill would be treated as an unfair trade practice. As such an action could be brought by the Attorney General to stop the violation and to collect a fine of up to $5000 for each violation. Individuals injured by the violation can sue for treble damages and recovery of reasonable attorneys fees.

EFFECTIVE DATE: The bill becomes effective July 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 378

Short Title: 311 Service. (Local)

Sponsors: Senators Dannelly; Clodfelter and Pittenger.

Referred to: Commerce.

March 12, 2003

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A 311 SYSTEM FOR NONEMERGENCY CALLS AND TO ALLOW MONEY IN THE EMERGENCY TELEPHONE SYSTEM FUND TO ALSO BE USED TO DEVELOP AND MAINTAIN THE 311 SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62A-2 reads as rewritten:

"**§ 62A-2. Legislative purposes.**

The General Assembly declares it to be in the public interest to provide a toll free number through which an individual in this State can gain rapid, direct access to public safety aid. The number shall be provided with the objective of reducing response time to situations requiring law enforcement, fire, medical, rescue, or other public safety service. To reduce the response time of calls made to the toll-free number, a second toll-free number may be established to receive nonemergency calls."

SECTION 2. G.S. 62A-3(1) reads as rewritten:

"(1) "911 system" or "911 service" means an emergency telephone system that provides the user of the public telephone system the ability to reach a public safety answering point by dialing the digits 911. The term 911 system or 911 service also includes "Enhanced 911 service", which means an emergency telephone system that provides the user of the public telephone system with 911 service and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated and provides the capability for automatic number identification and automatic location identification features. The 911 system or 911 service also includes a 311 system to receive nonemergency calls."

SECTION 3. G.S. 62A-8 reads as rewritten:

"**§ 62A-8. Payments from Fund.**

(a) Money from the Emergency Telephone System Fund shall be used only to pay for:

(1) The lease, purchase, or maintenance of emergency telephone equipment, including necessary computer hardware, software and database provisioning, addressing, and nonrecurring costs of establishing a 911 ~~system, and~~system and a nonemergency 311 system.

(2) The rates associated with the service supplier's 911 service and 311 service and other service supplier recurring charges.

(b) The following expenses are not eligible for payment from the Fund: the lease or purchase of real estate, cosmetic remodeling of emergency dispatch centers, hiring, training, and compensating dispatchers, and the purchase of mobile communications vehicles, ambulances, fire engines, or other emergency vehicles.

(c) A local government may contract with a service supplier for any term negotiated by the service supplier and the local government and may make payments from the Emergency Telephone System Fund to provide any payments required by the contract."

SECTION 4. This act applies to the City of Charlotte and Mecklenburg County only.

SECTION 5. This act is effective when it becomes law.

SB 378:
311 Service

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Sen. Dannelly
Date:	April 24, 2003	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

SUMMARY: SB 378 amends Article 1 of Chapter 62A to allow funds collected by local governments for emergency 911 systems to also be used for the operation of non-emergency 311 systems. It is a local bill applicable to the City of Charlotte and Mecklenburg County.

CURRENT LAW: Current law allows local governments to collect fees from telephone subscribers to be used to pay for certain aspects of installing and operating 911 answering systems.

BILL ANALYSIS: SB 378 would allow Charlotte and Mecklenburg County to also use the 911 funds to pay for a toll free (311) call receiving system to receive non-emergency calls. The act is effective when it becomes law.

BACKGROUND: In the 2001 Legislative Session eight separate local bills were filed that would have altered Article 1 of Chapter 62A in various ways by allowing different uses of 911 funds than those specified in the statutes. These included a local bill for the City of Charlotte to allow use of the 911 funds for a 311 system. The Legislature deferred all the bills and authorized the Joint Legislative Utility Review Committee to study possible changes to Article 1 of Chapter 62A, on a statewide basis. The length of the 2001 and 2002 Sessions did not leave sufficient time for the study to be completed.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 632

Short Title:	Workers' Comp./Agricultural Employment.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Commerce.	

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO LOWER THE NUMBER OF AGRICULTURAL WORKERS THAT MUST BE EMPLOYED BY AN EMPLOYER IN ORDER FOR AGRICULTURAL EMPLOYMENT TO BE WITHIN THE PURVIEW OF THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 97-2(1) reads as rewritten:

"(1) Employment. – The term 'employment' includes employment by the State and all political subdivisions thereof, and all public and quasi-public corporations therein and all private employments in which three or more employees are regularly employed in the same business or establishment or in which one or more employees are employed in activities which involve the use or presence of radiation, except ~~agriculture and~~ domestic ~~services, unless 10 or more full-time nonseasonal agricultural workers are regularly employed by the employer~~ services and an individual sawmill and logging operator with less than 10 employees, who saws and logs less than 60 days in any six consecutive months and whose principal business is unrelated to saw milling or logging."

SECTION 2. G.S. 97-13(b) reads as rewritten:

"(b) Casual Employment, Domestic Servants, ~~Farm Laborers,~~ Federal Government, Employer of Less than Three Employees. – This Article shall not apply to casual employees, ~~farm laborers when fewer than 10 full-time nonseasonal farm laborers are regularly employed by the same employer,~~ federal government employees in North Carolina, and domestic servants, nor to employees of such persons, nor to any person, firm or private corporation that has regularly in service less than three employees in the same business within this State, except that any employer without regard to number of employees, including an employer of domestic ~~servants, farm laborers,~~servants or one who previously had exempted himself, who has purchased

workers' compensation insurance to cover his compensation liability shall be conclusively presumed during life of the policy to have accepted the provisions of this Article from the effective date of said policy and his employees shall be so bound unless waived as provided in this Article; provided however, that this Article shall apply to all employers of one or more employees who are employed in activities which involve the use or presence of radiation."

SECTION 3. This act is effective when it becomes law and applies to all claims for workers' compensation that the Industrial Commission determines on or after that date and to all claims for workers' compensation that result in a settlement agreement entered into on or after that date.

SENATE BILL 632: Workers Compensation/Agricultural Employment.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Clodfelter
Date:	April 15, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 632 would lower the number of agricultural workers that must be employed before the employer is subject to the Workers Compensation Act from ten or more workers to three or more workers, as applies to most employers.***

CURRENT LAW: Currently employers of less than 10 agricultural workers are not required to have workers compensation coverage for their employees. Private employment of three or more employees triggers the requirement for workers compensation coverage for all employers except for agricultural, domestic and certain sawmill or logging employers who employ less than 10 workers.

BILL ANALYSIS: The bill would delete the exception for less than 10 agricultural workers from coverage under the Workers Compensation Act so that agricultural workers would be treated like most other employees. The exception would remain for less than 10 domestic workers and certain sawmill and logging employees.

EFFECTIVE DATE: The bill would become effective when it becomes law and would apply to all claims for workers compensation determined by the Industrial Commission on or after that date, and to all claims for workers compensation that result in settlement agreements entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 670

Short Title:	Creditable Service/Workers' Compensation.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Commerce.	

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CREDITABLE SERVICE IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM SHALL INCLUDE PERIODS OF EMPLOYER-APPROVED LEAVES OF ABSENCE WHEN IN RECEIPT OF WORKERS' COMPENSATION BENEFITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 128-26(l) is repealed.

SECTION 2. G.S. 128-26(g) reads as rewritten:

"(g) ~~During~~ Except as provided in subsection (g1) of this section, during periods when a member is on leave of absence and is receiving less than his full compensation, he will be deemed to be in service only if he is contributing to the Retirement System as provided in G.S. 128-30(b)(4). If he is so contributing, the annual rate of compensation paid to such employee immediately before the leave of absence began will be deemed to be the actual compensation rate of the employee during the leave of absence."

SECTION 3. G.S. 128-26 is amended by adding a new subsection to read:

"(g1) Creditable service at retirement shall include any periods of employer-approved leaves of absence when the member is in receipt of benefits under the Workers' Compensation Act, and the employer shall make both the employer and employee contributions during those periods."

SECTION 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 991

Short Title:	Consumer's Right to Know and Act.	(Public)
Sponsors:	Senator Reeves.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT STATE GOVERNMENT SHALL REQUIRE IN EVERY CONTRACT FOR THE PERFORMANCE OF TELEMARKETING SERVICES PROVISIONS THAT ONLY CITIZENS OF THE UNITED STATES AND PERSONS AUTHORIZED TO WORK IN THE UNITED STATES MAY BE EMPLOYED, AND TO PROVIDE FOR DISCLOSURE OF CERTAIN INFORMATION FROM CUSTOMER SALES AND SERVICE CENTERS.

The General Assembly of North Carolina enacts:

SECTION 1. Any contract for the performance of telemarketing services entered into by the State or by any board, commission, or institution of the State shall require that only citizens of the United States and persons authorized to work in the United States pursuant to federal law may be employed to perform such services.

SECTION 2. Any person who places a telephone call to, or receives a telephone call from, a customer sales or customer service call center has the right to know:

(1) The identification of the city, state, and country where the customer service employee is located.

(2) The name or registered alias of the customer services employee.

(3) The name of the employer of the person with whom the person is speaking.

SECTION 3. Any person who places a telephone call to, or receives a telephone call from, a customer sales or customer service call center has the right to:

(1) Speak to a qualified employee of the company or government agency the person is doing business with.

(2) Have none of their financial, credit, and identification information (including social security number and address) sent to any foreign country without express written permission.

SECTION 4. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 24, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Camille Steel	KCLH
BILL HALE	JORDAN PRICE LAW FIRM
VL McBride	~~YMPA~~
Bill Wilson	NCATL
Katie Pomeroy	FHA
JON WILLIAMS	CEPS
P&P	NCHB
Mike Okun	NC State DFLCO
Marcos Arellano	Intern for Rep. Luebke
Drew Edwards	CWA 3611
John M. May	NC CWA Council

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 24, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan Smith	NC CWA Political Council
Bob Hillman	Public Staff - NCUC
Bill Scoggin	KCCH
Stan Eury	North Carolina Growers Assoc.
Bill Bryan	Mt Olive Pickle
Lynn Williams	Mt. Olive Pickle
Robert Marshall	Young, Moore
Doris Weaver	NC CWA Political Council
Tom Coley	NC CWA Political Council
John Bowdish	AstraZeneca
Jim Kerr	NCUC

VISITOR REGISTRATION SHEET

Senáte Commerce Committee — April 24, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bobby Owens	NC UC
Carol Scheele	NC Medical Society
Bob Wells	NC Telecom Alliance
John McDonald	Cisco Systems
Kevin Blair	Farm Labor Organizing Committee AFL-CIO
Esteban Echeverria	Student Action with Farmworkers
[illegible]	NCAHP
[illegible]	NCAHP
PAUL MAHONEY	NCAHP
Richard Taylor	NEA
Lisa Martin	APCO - President
W.H. Potter	NCDS ~ NCPTA
Michelle Frazier	NC Bar Ass'n

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 24, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jason Barbour	Johnston Co 911
Philip Penny	Raleigh-Wake 911
Bevic Ruston	[illegible]
Stan Pace	Verizon
Pam Wescott	Sprint
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
Andy Ellen	NCCRMA
Tom Sn.	NYCRMA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 24, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Phillips	PFFPNC
Mark Bryson	Capitol Group
Jack Cozort	US Lec
C. Headrick	NFO
Ann Lore	DUHS
Hugh Tilson	NCHA
[illegible]	NCICU
Larry Hedrick	Household Financial Group
[illegible]	ABS
Bill Rose	NC Justice Ctr
Al Lyda	" " "

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 24, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lindsay Harrison	EHSE
Betty Turner	Bank of America
Paul Sock	NC Bankers

VISITOR REGISTRATION SHEET

Commerce — 4/24/03

Name of Committee — Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Gene Ainsworth	RJR
Bruce Thompson	Pacific Pac
[illegible]	[illegible]
Leslie Stafford	DOA
Bette Kennedy	NCCADV
John Guard	Pitt County Sheriff's Office
Tad W. Kepley	Lexington Police Dept.
Dick Taylor	NCAOL
[illegible]	[illegible]
[illegible]	[illegible]
Audrey H. Galloway	Strategic Influences

AGENDA

SENATE COMMERCE COMMITTEE
Thursday, April 24, 2003 at 11:00 AM
Room 1027, Legislative Building

Welcome and Opening Remarks

Bills to be Considered

SB 661	Health Care Information Privacy	Senator Reeves
SB 770	Insurers Reveal Financial Int in Repairers.	Senator Thomas
SB 814	Amend Public Laws - 1.	Senator Rand
SB 872	Unwanted Telephone Solicitations.	Senator Thomas
SB 991	Consumer's Right to Know and Act.	Senator Reeves

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, April 29, 2003 at 11:00 a.m.
Room 1027, Legislative Building
MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, April 29, 2003, in Room 1027 of the Legislative Building. Seventeen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced the pages: Laura Talley of Clayton, sponsored by Senator Fred Smith; and Fondarae Duncan of Laurinburg, sponsored by Senator William Purcell.

Senator David Hoyle was introduced to explain SB 814, Amend Public Laws - 1. He moved the adoption of a committee substitute. The motion carried. Ms. JoAnne Sanford, Chair of the Utilities Commission, was introduced to comment the Commission's opposition to the committee substitute. Mr. Bobby Owens, a Commissioner of the Utilities Commission, also spoke in opposition to the committee substitute. Senator Robert Rucho moved the adoption of an amendment. Mr. Dwight Allen, representing the North Carolina Telephone Cooperative Coalition, spoke in support of the amendment. The motion failed. Senator Katie Dorsett sent forth an amendment and moved its adoption. The motion carried. Senator Kerr sent forth a substitute committee substitute to send the bill to a study committee and moved its adoption. The motion failed. Senator Hoyle moved an unfavorable report of the bill, but favorable as to the adopted committee substitute as amended and engrossed into a new committee substitute. The motion carried.

Senator Scott Thomas was introduced to explain SB 872, Unwanted Telephone Solicitations. Senator Bob Carpenter moved the adoption of a committee substitute. The motion carried. Attorney General Roy Cooper spoke in support of the bill. Senator Hoyle moved the adoption of an amendment. Both Attorney General Cooper and Senator Thomas spoke in opposition to the amendment. Mr. Ted Vaden, representing the North Carolina Newspaper Association, spoke in support of the amendment. The motion failed. Senator William Purcell moved an unfavorable report of the bill, but favorable as to the committee substitute. The motion carried.

Senator Thomas told the committee he did not want SB 770, Insurers Reveal Financial Int in Repairers, to be acted on because a House companion bill should be referred to the committee before the crossover deadline.

Senator Eric Reeves was introduced to explain SB 991, Consumer's Right to Know and Act. Senator Hoyle moved for a favorable report of the bill. The motion carried.

Senator Soles brought SB 661, Health Care Information Privacy, as amended at a previous meeting, before the committee for consideration. After discussion, no action was taken on the bill.

The meeting adjourned at 12:40 p.m. without considering SB 770 at the sponsor's request.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, April 29, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **991** Consumer's Right to Know and Act.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **814** Amend Public Laws - 1.
Draft Number: PCS 65286
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, April 29, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **872** Unwanted Telephone Solicitations.

Draft Number:	PCS35270
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 814

Short Title:	Amend Public Laws - 1.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Rules and Operations of the Senate.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT AMENDING THE PUBLIC LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. This act is effective when it becomes law.

SB 814:
Clarify Competitive Telecomunications Services

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Sen. Rand
Date:	April 29, 2003	**Summary by:**	Steven Rose
Version:	PCS S814-PCS65283-RL-22		Committee Counsel

SUMMARY: ***The proposed committee substitute for SB 814 provides for deregulation of intrastate long distance services and makes changes to statutes governing certain local telecommunications services.***

BILL ANALYSIS: The following changes to Chapter 62 of the General Statutes are found in SB 814:

Section 1. Amends G.S. 62-2 by making a finding that interLATA and intraLATA long distance services, and long distance operator services, are sufficiently competitive so as to no longer require regulation by the Utilities Commission. This would apply to all in-state long distance service. LATA means Local Access and Transport Area, a term designating the service territory of a local telephone company as determined under the judicial proceedings that led to the break-up of the AT&T/Bell System monopoly in 1983.

The Commission retains jurisdiction over complaints dealing with unauthorized changes of long distance services or unauthorized charges in connection with such services.

Section 2. Amends G.S. 62-133.5, a section of the statutes enacted in 1995 to help promote competition in the provision of local telephone service. This statute allows the Commission to approve pricing plans that are not based on a regulated recovery of costs and a regulated rate of return.

The amendment to G.S. 62-133.5(c) provides that when a company has already shifted from rate of return regulation to price regulation, as provided in subsection (a) of this statute, and then seeks a modification of that plan under subsection (c), if the Commission disapproves any part of the modification request, the company has the option of remaining under its previously approved price plan.

G.S. 62-133.5 is further amended by adding a provision, that will now be designated as subsection (d), prohibiting the Commission from using a company's earnings or rate of return to determine if a proposed price regulation plan is in the public interest. A plan not in the public interest would not be approved under the existing provisions of this statute.

G.S. 62-133.5 is further amended by redesignating subsection (d) as (d1) and adding a provision that returned check charges will no longer be regulated by the Commission. They would then be controlled by G.S. 25-3-506, which provides for a $25.00 fee.

G.S. 62-133.5(f) is amended to allow local telephone providers and competing local providers to offer

certain services on one calendar day's notice to the Commission, and without Commission approval. These are promotional or bundled service offerings that combine regulated and non-regulated services featuring discounts applicable to nonregulated services. The companies are not obligated to convert existing customers who subscribe to the same or similar services.

Section 3. Provides that the act is effective when it becomes law.

SB814-SMRL-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 814
PROPOSED COMMITTEE SUBSTITUTE S814-PCS65283-RL-22

Short Title: Clarify Compet. Telecommunications Statutes. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING COMPETITIVE AND DEREGULATED OFFERINGS OF TELECOMMUNICATIONS SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-2 reads as rewritten:

"**§ 62-2. Declaration of Policy.**

(a) Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

(1) To provide fair regulation of public utilities in the interest of the public;

(2) To promote the inherent advantage of regulated public utilities;

(3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;

(3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills;

(4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or

advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;

(4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in plants under construction;

(5) To encourage and promote harmony between public utilities, their users and the environment;

(6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;

(7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development;

(8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply; and

(9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of expansion funds for natural gas local distribution companies or gas districts to be administered under the supervision of the North Carolina Utilities Commission.

(b) To these ends, therefore, authority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements, and in the manner and in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any extension of Utilities Commission regulatory jurisdiction over any industry or enterprise that is not subject to the regulatory jurisdiction of said Commission.

Because of technological changes in the equipment and facilities now available and needed to provide telephone and telecommunications services, changes in regulatory policies by the federal government, and changes resulting from the court-ordered divestiture of the American Telephone and Telegraph Company, competitive offerings of certain types of telephone and telecommunications services may be in the public interest. Consequently, authority shall be vested in the North Carolina Utilities

Commission to allow competitive offerings of local exchange, exchange access, and long distance services by public utilities defined in G.S. 62-3(23)a.6. and certified in accordance with the provisions of G.S. 62-110, and the Commission is further authorized after notice to affected parties and hearing to deregulate or to exempt from regulation under any or all provisions of this Chapter: (i) a service provided by any public utility as defined in G.S. 62-3(23)a.6. upon a finding that such service is competitive and that such deregulation or exemption from regulation is in the public interest; or (ii) a public utility as defined in G.S. 62-3(23)a.6., or a portion of the business of such public utility, upon a finding that the service or business of such public utility is competitive and that such deregulation or exemption from regulation is in the public interest.

~~The policy and authority stated in this section shall be applicable to common carriers of passengers by motor vehicle and their regulation by the North Carolina Utilities Commission only to the extent that they are consistent with the provisions of the Bus Regulatory Reform Act of 1985.~~ Notwithstanding the provisions of G.S. 62-110(b) and G.S. 62-134(h), the following services provided by public utilities defined in G.S. 62-3(23)a.6. are sufficiently competitive and shall no longer be regulated by the Commission: (i) intraLATA long distance service; (ii) interLATA long distance service; and (iii) long distance operator services. Nothing in this subsection shall limit the Commission's authority regarding certification of providers of such services or its authority to hear and resolve complaints against providers of such services alleged to have made changes to the services of customers or imposed charges without appropriate authorization.

The North Carolina Utilities Commission may develop regulatory policies to govern the provision of telecommunications services to the public which promote efficiency, technological innovation, economic growth, and permit telecommunications utilities a reasonable opportunity to compete in an emerging competitive environment, giving due regard to consumers, stockholders, and maintenance of reasonably affordable local exchange service and long distance service.

(c) The policy and authority stated in this section shall be applicable to common carriers of passengers by motor vehicle and their regulation by the North Carolina Utilities Commission only to the extent that they are consistent with the provisions of the Bus Regulatory Reform Act of 1985."

SECTION 2. G.S. 62-133.5 reads as rewritten:

"**§ 62-133.5. Alternative regulation, tariffing, and deregulation of telecommunications utilities.**

(a) Any local exchange company, subject to the provisions of G.S. 62-110(f1), that is subject to rate of return regulation pursuant to G.S. 62-133 or a form of alternative regulation authorized by subsection (b) of this section may elect to have the rates, terms, and conditions of its services determined pursuant to a form of price regulation, rather than rate of return or other form of earnings regulation. Under this form of price regulation, the Commission shall, among other things, permit the local exchange company to determine and set its own depreciation rates, to rebalance its rates, and to adjust its prices in the aggregate, or to adjust its prices for various

aggregated categories of services, based upon changes in generally accepted indices of prices. Upon application, the Commission shall, after notice and an opportunity for interested parties to be heard, approve such price regulation, which may differ between local exchange companies, upon finding that the plan as proposed (i) protects the affordability of basic local exchange service, as such service is defined by the Commission; (ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards that the Commission may adopt; (iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and (iv) is otherwise consistent with the public interest. Upon approval, and except as provided in subsection (c) of this section, price regulation shall thereafter be the sole form of regulation imposed upon the electing local exchange company, and the Commission shall thenceforth regulate the electing local exchange company's prices, rather than its earnings. The Commission shall issue an order denying or approving the proposed plan for price regulation, with or without modification, not more than 90 days from the filing of the application. However, the Commission may extend the time period for an additional 90 days at the discretion of the Commission. If the Commission approves the application with modifications, the local exchange company subject to such approval may accept the modifications and implement the proposed plan as modified, or may, at its option, (i) withdraw its application and continue to be regulated under the form of regulation that existed immediately prior to the filing of the application; (ii) file another proposed plan for price regulation; or (iii) file an application for a form of alternative regulation under subsection (b) of this section. If the initial price regulation plan is approved with modifications and the local exchange company files another plan pursuant to part (ii) of the previous sentence, the Commission shall issue an order denying or approving the proposed plan for price regulation, with or without modifications, not more than 90 days from that filing by the local exchange company.

(b) Any local exchange company that is subject to rate of return regulation pursuant to G.S. 62-133 and which elects not to file for price regulation under the provisions of subsection (a) above may file an application with the Commission for forms of alternative regulation, which may differ between companies and may include, but are not limited to, ranges of authorized returns, categories of services, and price indexing. Upon application, the Commission shall approve such alternative regulatory plan upon finding that the plan as proposed (i) protects the affordability of basic local exchange service, as such service is defined by the Commission; (ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards established by the Commission; (iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and (iv) is otherwise consistent with the public interest. The Commission shall issue an order denying or approving the proposed plan with or without modification, not more than 90 days from the filing of the application. However, the Commission may extend the time period for an additional 90 days at the discretion of the Commission. If the Commission approves the application with modifications, the local exchange company subject to such approval may, at its option, accept the modifications and implement the proposed plan

as modified or may, at its option, (i) withdraw its application and continue to be regulated under the form of regulation that existed at the time of filing the application; or (ii) file an application for another form of alternative regulation. If the initial plan is approved with modifications and the local exchange company files another plan pursuant to part (ii) of the previous sentence, the Commission shall issue an order denying or approving the proposed plan, with or without modifications, not more than 90 days from that filing by the local exchange company.

(c) Any local exchange company subject to price regulation under the provisions of subsection (a) of this section may file an application with the Commission to modify such form of price regulation or for other forms of regulation. Any local exchange company subject to a form of alternative regulation under subsection (b) of this section may file an application with the Commission to modify such form of alternative regulation. Upon application, the Commission shall approve such other form of regulation upon finding that the plan as proposed (i) protects the affordability of basic local exchange service, as such service is defined by the Commission; (ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards established by the Commission; (iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and (iv) is otherwise consistent with the public interest. If the Commission disapproves, in whole or in part, a local exchange company's application to modify its existing form of price regulation, the company may elect to continue to operate under its then existing plan previously approved under this subsection or subsection (a) of this section.

(d) In determining whether a price regulation plan is otherwise consistent with the public interest, the Commission shall not consider the local exchange company's past or present earnings or rates of return.

(d1)~~(d)~~ Any local exchange company subject to price regulation under the provisions of subsection (a) of this section, or other alternative regulation under subsection (b) of this section, or other form of regulation under subsection (c) of this section shall file tariffs for basic local exchange service and toll switched access services stating the terms and conditions of the services and the applicable rates. However, fees charged by such local exchange companies applicable to charges for returned checks shall not be tariffed or otherwise regulated by the Commission. The filing of any tariff changing the terms and conditions of such services or increasing the rates for such services shall be presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days, 14 days after filing. Any tariff reducing rates for basic local exchange service or toll switched access service shall be presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days, seven days after filing. Any local exchange company subject to price regulation under the provisions of subsection (a) of this section, or other alternative regulation under subsection (b) of this section, or other form of regulation under subsection (c) of this section may file tariffs for services other than basic local exchange services and toll switched access services. Any tariff changing the terms and conditions of such services or increasing the rates for an existing service or establishing the terms, conditions, or rates for a new service shall be

presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days, 14 days after filing. Any tariff reducing the rates for such services shall be presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days, seven days after filing. In the event of a complaint with regard to a tariff filing under this subsection, the Commission may take such steps as it deems appropriate to assure that such tariff filing is consistent with the plan previously adopted pursuant to subsection (a) of this section, subsection (b) of this section, or subsection (c) of this section.

(e) Any allegation of anticompetitive activity by a competing local provider or a local exchange company shall be raised in a complaint proceeding pursuant to G.S. 62-73.

(f) Notwithstanding the provisions of G.S. 62-140, or any Commission rule or regulation, the Commission shall permit a local exchange company or a competing local provider to offer competitive services with flexible pricing arrangements to business customers pursuant to contract and shall permit other flexible pricing options. Local exchange companies and competing local providers shall be required to give the Commission one calendar day's notice but need not seek Commission approval for any promotion or bundled service offering for residence or business customers involving both regulated and nonregulated services that feature price discounts that apply exclusively to services not regulated by the Commission. Furthermore, local exchange companies and competing local providers may offer special promotions and bundles of new or existing service or products without the obligation to identify or convert existing customers who subscribe to the same or similar services or products.

(g) The following sections of Chapter 62 of the General Statutes shall not apply to local exchange companies subject to price regulation under the terms of subsection (a) of this section: G.S. 62-35(c), 62-45, 62-51, 62-81, 62-111, 62-130, 62-131, 62-132, 62-133, 62-134, 62-135, 62-136, 62-137, 62-139, 62-142, and 62-153."

SECTION 3. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 814

AMENDMENT NO. #1
(to be filled in by
Principal Clerk)

S814-ARL-9 [v.1]

Date 4/29/0 ,2003

Comm. Sub. [NO]
Amends Title [NO]
S814-PCS65283-RL-22

Senator Rucho

moves to amend the bill on page 6, lines 15-23, by rewriting those lines to read:

"customers pursuant to contract and competing local providers and shall permit other flexible pricing options. Local exchange companies seeking to offer any promotion or bundled service offering for residence or business customers, which include both regulated and nonregulated services that feature price discounts that apply exclusively to services not regulated by the Commission, must notify the Commission and post the notification on the Commission's website at least three business days prior to the effective date of any such promotion or bundled service offering. Such promotion or bundled service offering shall go into effect immediately, without Commission approval, provided, however, the Public Staff, Attorney General, or any other affected company or person may file a complaint pursuant to subsection (e) of this section, or alleging that the offering is otherwise adverse to the public interest. The Commission shall have authority to take any action deemed necessary, including suspension of the proposed promotion or bundled service offering, pending a final review by the Commission. Furthermore, local exchange companies and competing local providers may offer special promotions and bundles of new or existing service products without obligation to identify or convert existing customers who subscribe to the same or similar services or products.".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 814

AMENDMENT NO. #1
(to be filled in by
Principal Clerk)

S814-ARL-9 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED X TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS RL 22

H. B. No. _____ DATE 4/29/03

S. B. No. 814 Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Dorsett
Sen.)

1 moves to amend the bill on page 6, line 17
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the word "calendar" and
4
5 substituting the words "business".
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19

SIGNED Katie G. Dorsett

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

not adopted

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 814
PROPOSED COMMITTEE SUBSTITUTE S814-CSRF-17 [v.1]

4/29/2003 10:26:35 AM

Short Title: Study Competitive Telecommunications Services (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE TO STUDY THE ISSUE OF COMPETITIVE AND DEREGULATED OFFERINGS OF TELECOMMUNICATIONS SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. The Joint Legislative Utility Review Committee shall study the issue of competitive and deregulated offerings of telecommunications services including whether intraLATA long distance services, interLATA long distance services and long distance operator services have become sufficiently competitive and should no longer be regulated by the North Carolina Utilities Commission. The Committee is authorized to report its findings and recommendations including any proposed legislation to the 2004 Regular Session of the 2003 General Assembly and to the 2005 General Assembly.

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S D

SENATE BILL 814
PROPOSED COMMITTEE SUBSTITUTE S814-PCS65286-RL-26

Short Title: Clarify Compet. Telecommunications Statutes. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING COMPETITIVE AND DEREGULATED OFFERINGS OF TELECOMMUNICATIONS SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-2 reads as rewritten:

"**§ 62-2. Declaration of Policy.**

(a) Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

(1) To provide fair regulation of public utilities in the interest of the public;

(2) To promote the inherent advantage of regulated public utilities;

(3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;

(3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills;

(4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or

advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;

(4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in plants under construction;

(5) To encourage and promote harmony between public utilities, their users and the environment;

(6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;

(7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development;

(8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply; and

(9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of expansion funds for natural gas local distribution companies or gas districts to be administered under the supervision of the North Carolina Utilities Commission.

(b) To these ends, therefore, authority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements, and in the manner and in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any extension of Utilities Commission regulatory jurisdiction over any industry or enterprise that is not subject to the regulatory jurisdiction of said Commission.

Because of technological changes in the equipment and facilities now available and needed to provide telephone and telecommunications services, changes in regulatory policies by the federal government, and changes resulting from the court-ordered divestiture of the American Telephone and Telegraph Company, competitive offerings of certain types of telephone and telecommunications services may be in the public interest. Consequently, authority shall be vested in the North Carolina Utilities

Commission to allow competitive offerings of local exchange, exchange access, and long distance services by public utilities defined in G.S. 62-3(23)a.6. and certified in accordance with the provisions of G.S. 62-110, and the Commission is further authorized after notice to affected parties and hearing to deregulate or to exempt from regulation under any or all provisions of this Chapter: (i) a service provided by any public utility as defined in G.S. 62-3(23)a.6. upon a finding that such service is competitive and that such deregulation or exemption from regulation is in the public interest; or (ii) a public utility as defined in G.S. 62-3(23)a.6., or a portion of the business of such public utility, upon a finding that the service or business of such public utility is competitive and that such deregulation or exemption from regulation is in the public interest.

~~The policy and authority stated in this section shall be applicable to common carriers of passengers by motor vehicle and their regulation by the North Carolina Utilities Commission only to the extent that they are consistent with the provisions of the Bus Regulatory Reform Act of 1985.~~ Notwithstanding the provisions of G.S. 62-110(b) and G.S. 62-134(h), the following services provided by public utilities defined in G.S. 62-3(23)a.6. are sufficiently competitive and shall no longer be regulated by the Commission: (i) intraLATA long distance service; (ii) interLATA long distance service; and (iii) long distance operator services. Nothing in this subsection shall limit the Commission's authority regarding certification of providers of such services or its authority to hear and resolve complaints against providers of such services alleged to have made changes to the services of customers or imposed charges without appropriate authorization.

The North Carolina Utilities Commission may develop regulatory policies to govern the provision of telecommunications services to the public which promote efficiency, technological innovation, economic growth, and permit telecommunications utilities a reasonable opportunity to compete in an emerging competitive environment, giving due regard to consumers, stockholders, and maintenance of reasonably affordable local exchange service and long distance service.

(c) The policy and authority stated in this section shall be applicable to common carriers of passengers by motor vehicle and their regulation by the North Carolina Utilities Commission only to the extent that they are consistent with the provisions of the Bus Regulatory Reform Act of 1985."

SECTION 2. G.S. 62-133.5 reads as rewritten:

"**§ 62-133.5. Alternative regulation, tariffing, and deregulation of telecommunications utilities.**

(a) Any local exchange company, subject to the provisions of G.S. 62-110(f1), that is subject to rate of return regulation pursuant to G.S. 62-133 or a form of alternative regulation authorized by subsection (b) of this section may elect to have the rates, terms, and conditions of its services determined pursuant to a form of price regulation, rather than rate of return or other form of earnings regulation. Under this form of price regulation, the Commission shall, among other things, permit the local exchange company to determine and set its own depreciation rates, to rebalance its rates, and to adjust its prices in the aggregate, or to adjust its prices for various

aggregated categories of services, based upon changes in generally accepted indices of prices. Upon application, the Commission shall, after notice and an opportunity for interested parties to be heard, approve such price regulation, which may differ between local exchange companies, upon finding that the plan as proposed (i) protects the affordability of basic local exchange service, as such service is defined by the Commission; (ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards that the Commission may adopt; (iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and (iv) is otherwise consistent with the public interest. Upon approval, and except as provided in subsection (c) of this section, price regulation shall thereafter be the sole form of regulation imposed upon the electing local exchange company, and the Commission shall thenceforth regulate the electing local exchange company's prices, rather than its earnings. The Commission shall issue an order denying or approving the proposed plan for price regulation, with or without modification, not more than 90 days from the filing of the application. However, the Commission may extend the time period for an additional 90 days at the discretion of the Commission. If the Commission approves the application with modifications, the local exchange company subject to such approval may accept the modifications and implement the proposed plan as modified, or may, at its option, (i) withdraw its application and continue to be regulated under the form of regulation that existed immediately prior to the filing of the application; (ii) file another proposed plan for price regulation; or (iii) file an application for a form of alternative regulation under subsection (b) of this section. If the initial price regulation plan is approved with modifications and the local exchange company files another plan pursuant to part (ii) of the previous sentence, the Commission shall issue an order denying or approving the proposed plan for price regulation, with or without modifications, not more than 90 days from that filing by the local exchange company.

(b) Any local exchange company that is subject to rate of return regulation pursuant to G.S. 62-133 and which elects not to file for price regulation under the provisions of subsection (a) above may file an application with the Commission for forms of alternative regulation, which may differ between companies and may include, but are not limited to, ranges of authorized returns, categories of services, and price indexing. Upon application, the Commission shall approve such alternative regulatory plan upon finding that the plan as proposed (i) protects the affordability of basic local exchange service, as such service is defined by the Commission; (ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards established by the Commission; (iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and (iv) is otherwise consistent with the public interest. The Commission shall issue an order denying or approving the proposed plan with or without modification, not more than 90 days from the filing of the application. However, the Commission may extend the time period for an additional 90 days at the discretion of the Commission. If the Commission approves the application with modifications, the local exchange company subject to such approval may, at its option, accept the modifications and implement the proposed plan

as modified or may, at its option, (i) withdraw its application and continue to be regulated under the form of regulation that existed at the time of filing the application; or (ii) file an application for another form of alternative regulation. If the initial plan is approved with modifications and the local exchange company files another plan pursuant to part (ii) of the previous sentence, the Commission shall issue an order denying or approving the proposed plan, with or without modifications, not more than 90 days from that filing by the local exchange company.

(c) Any local exchange company subject to price regulation under the provisions of subsection (a) of this section may file an application with the Commission to modify such form of price regulation or for other forms of regulation. Any local exchange company subject to a form of alternative regulation under subsection (b) of this section may file an application with the Commission to modify such form of alternative regulation. Upon application, the Commission shall approve such other form of regulation upon finding that the plan as proposed (i) protects the affordability of basic local exchange service, as such service is defined by the Commission; (ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards established by the Commission; (iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and (iv) is otherwise consistent with the public interest. If the Commission disapproves, in whole or in part, a local exchange company's application to modify its existing form of price regulation, the company may elect to continue to operate under its then existing plan previously approved under this subsection or subsection (a) of this section.

(d) In determining whether a price regulation plan is otherwise consistent with the public interest, the Commission shall not consider the local exchange company's past or present earnings or rates of return.

(d1)~~(d)~~ Any local exchange company subject to price regulation under the provisions of subsection (a) of this section, or other alternative regulation under subsection (b) of this section, or other form of regulation under subsection (c) of this section shall file tariffs for basic local exchange service and toll switched access services stating the terms and conditions of the services and the applicable rates. However, fees charged by such local exchange companies applicable to charges for returned checks shall not be tariffed or otherwise regulated by the Commission. The filing of any tariff changing the terms and conditions of such services or increasing the rates for such services shall be presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days, 14 days after filing. Any tariff reducing rates for basic local exchange service or toll switched access service shall be presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days, seven days after filing. Any local exchange company subject to price regulation under the provisions of subsection (a) of this section, or other alternative regulation under subsection (b) of this section, or other form of regulation under subsection (c) of this section may file tariffs for services other than basic local exchange services and toll switched access services. Any tariff changing the terms and conditions of such services or increasing the rates for an existing service or establishing the terms, conditions, or rates for a new service shall be

presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days, 14 days after filing. Any tariff reducing the rates for such services shall be presumed valid and shall become effective, unless otherwise suspended by the Commission for a term not to exceed 45 days, seven days after filing. In the event of a complaint with regard to a tariff filing under this subsection, the Commission may take such steps as it deems appropriate to assure that such tariff filing is consistent with the plan previously adopted pursuant to subsection (a) of this section, subsection (b) of this section, or subsection (c) of this section.

(e) Any allegation of anticompetitive activity by a competing local provider or a local exchange company shall be raised in a complaint proceeding pursuant to G.S. 62-73.

(f) Notwithstanding the provisions of G.S. 62-140, or any Commission rule or regulation, the Commission shall permit a local exchange company or a competing local provider to offer competitive services with flexible pricing arrangements to business customers pursuant to contract and shall permit other flexible pricing options. Local exchange companies and competing local providers shall be required to give the Commission one business day's notice but need not seek Commission approval for any promotion or bundled service offering for residence or business customers involving both regulated and nonregulated services that feature price discounts that apply exclusively to services not regulated by the Commission. Furthermore, local exchange companies and competing local providers may offer special promotions and bundles of new or existing service or products without the obligation to identify or convert existing customers who subscribe to the same or similar services or products.

(g) The following sections of Chapter 62 of the General Statutes shall not apply to local exchange companies subject to price regulation under the terms of subsection (a) of this section: G.S. 62-35(c), 62-45, 62-51, 62-81, 62-111, 62-130, 62-131, 62-132, 62-133, 62-134, 62-135, 62-136, 62-137, 62-139, 62-142, and 62-153."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 872

Short Title:	Unwanted Telephone Solicitations.	(Public)
Sponsors:	Senator Thomas.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO INCREASE PROTECTIONS FOR TELEPHONE SUBSCRIBERS WHO WISH TO STOP UNWANTED TELEPHONE SOLICITATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 75 of the General Statutes is amended.

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 872
PROPOSED COMMITTEE SUBSTITUTE S872-CSRO-15 [v.1]

4/28/2003 7:25:29 PM

Short Title: Unwanted Telephone Solicitations. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO INCREASE PROTECTIONS FOR TELEPHONE SUBSCRIBERS WHO WISH TO STOP UNWANTED TELEPHONE SOLICITATIONS AND FOR CONSUMERS WHO ENTER INTO TELEMARKETING TRANSACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-30 is repealed.

SECTION 2. G.S. 75-30.1 is repealed.

SECTION 3. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Telephone Solicitations.

"**§ 75-100. Findings.**

The General Assembly finds all of the following:

(1) The use of the telephone to market goods and services to the home is now pervasive due to the increased use of cost-effective telephone solicitation technologies and techniques.

(2) While some consumers enjoy and benefit from telephone solicitations from legitimate telephone solicitors, many others object to these telephone solicitations as an intrusive invasion of their privacy in the home.

(3) In addition, the proliferation of telephone solicitations, especially during the evening hours, creates a nuisance and a disturbance upon the home and family life of telephone subscribers during a time of day used by many families for traditional family activities.

(4) North Carolina residents should have the freedom to choose whether or not to permit telephone solicitors to contact them.

(5) Individual privacy rights, personal safety, prevention of fraud, and commercial freedom of speech and trade must be balanced in a way

that protects the privacy of individuals and permits legitimate telephone solicitation practices.

(6) Legitimate telephone solicitors have no interest in continuing to invade the privacy of those telephone subscribers who affirmatively express their desires to receive no further telephone solicitations.

(7) Many telephone subscribers who have transacted business with firms that employ telephone solicitations have experienced problems with their checking and credit card accounts being debited before they can evaluate the terms and conditions of the transaction, before they can evaluate the merchandise or service to be delivered, or without their agreement to enter into the transaction or authorize such transactions in the first place. Other telephone subscribers have had unauthorized charges placed on their telephone bill and have had their long distance carrier switched without their authorization as a result of telephone solicitations.

(8) New technologies that make telephone solicitations more cost-effective also allow for the creation of a 'Do Not Call' Registry through which North Carolina consumers can easily register their desires not to receive further telephone solicitations and telephone solicitors can easily access and employ lists of consumers who have registered those desires.

(9) The public interest requires an efficient mechanism for telephone subscribers to notify telephone solicitors that their telephone numbers cannot be called and additional protections for North Carolina residents who enter into consumer transactions initiated through telephone solicitations.

"**§ 75-101. Definitions.**

The following definitions apply in this Article:

(1) Affiliate. – A business establishment, business, or other legal entity that wholly or substantially owns, is wholly or substantially owned by, or is under common ownership with a telephone solicitor.

(2) Automatic dialing and recorded message player. – Any automatic equipment that incorporates a storage capability of telephone numbers to be called or a random or a sequential number generator capable of producing numbers to be called that, working alone or in conjunction with other equipment, disseminates a prerecorded message to the telephone number called.

(3) 'Do Not Call' Registry. – The registry created and maintained by the Federal Trade Commission pursuant to the Telemarketing Sales Rule. It also means any other telemarketing registry created by the federal government, including the Federal Communications Commission. It also means any registry created by the Attorney General pursuant to G.S. 75-102(o).

(4) Doing business in this State. – To make or cause to be made any telephone solicitation to North Carolina telephone subscribers, whether the telephone solicitations are made from a location inside North Carolina or outside North Carolina.

(5) Established business relationship. – A relationship between a seller and a consumer based on:

a. the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and the seller or one or more of its affiliates, within the 18 months immediately preceding the date of a telephone solicitation; or

b. the consumer's inquiry or application regarding a product or service offered by the seller within the three months immediately preceding the date of a telephone solicitation.

(6) Express invitation or permission. – Any invitation or permission that is registered by the telephone subscriber on an independent form and that contains the telephone number to which calls can be placed and the signature of the telephone subscriber. The form may be completed and signed electronically.

(7) Person. – Any individual, business establishment, business, or other legal entity.

(8) Telemarketing Sales Rule. – The federal regulation promulgated by the Federal Trade Commission, 16 C.F.R. Part 310 (January 29, 2003 Edition), as amended, to implement the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, as amended.

(9) Telephone subscriber. – An individual who subscribes to a residential telephone service from a local exchange company, a competing local provider certified to do business in North Carolina, or a wireless telephone company; or the persons living or residing with that person.

(10) Telephone solicitation. – A voice communication, whether prerecorded, live, or a facsimile, over a telephone line or wireless telephone network or via a commercial mobile radio service that is made by a telephone solicitor to a telephone subscriber for the purpose of soliciting or encouraging the purchase or rental of, or investment in, property, goods, or services; obtaining or providing information that will or may be used for that purpose; soliciting or encouraging a telephone subscriber's participation in any contest, sweepstakes, raffle, or lottery, whether legal or illegal; or obtaining a charitable donation. 'Telephone solicitation' also includes those transactions that are defined as 'telemarketing' under the Telemarketing Sales Rule.

(11) Telephone solicitor. – Any individual, business establishment, business, or other legal entity doing business in this State that, directly or through salespersons or agents, makes or attempts to make telephone solicitations or causes telephone solicitations to be made.

'Telephone solicitor' also includes any party defined as a 'telemarketer' under the Telemarketing Sales Rule.

(12) Unsolicited telephone call. – A voice communication, whether prerecorded, live, or a facsimile, over a telephone line or wireless telephone network or via a commercial mobile radio service that is made by a person to a telephone subscriber without prior express invitation or permission.

"§ 75-102. Restrictions on telephone solicitations.

(a) Except as provided in subsection (c) of this section, no telephone solicitor shall make a telephone solicitation to a telephone subscriber's telephone number if the telephone subscriber's telephone number appears in the latest edition of the 'Do Not Call' Registry.

(b) No telephone solicitor shall make a telephone solicitation to a telephone subscriber's telephone number if the telephone subscriber previously has communicated to the telephone solicitor a desire to receive no further telephone solicitations from the telephone solicitor to that number.

(c) Subsection (a) of this section does not apply to any of the following telephone solicitations:

(1) To any telephone subscriber with the telephone subscriber's prior express invitation or permission.

(2) To any telephone subscriber with whom the telephone solicitor has an established business relationship.

(3) By or on behalf of a tax-exempt nonprofit organization.

(4) By or on behalf of a telephone solicitor that employs fewer than 10 full or part-time direct employees, the telephone solicitations are made by the direct employees, and the direct employees collectively make or attempt to make no more than an average of 10 telephone solicitations to telephone subscribers per week during a calendar year.

(5) To any telephone subscriber for the sole purpose of arranging a subsequent face-to-face meeting between the telephone solicitor and the telephone subscriber and the telephone solicitor does none of the following during the telephone solicitation:

a. Seek payment from the telephone subscriber in connection with the sale or rental of, or investment in, property, goods, or services.

b. Complete the sale or rental of, or investment in, property, goods, or services.

c. Obtain provisional acceptance of a sale, rental, or investment.

d. Obtain the agreement of the telephone subscriber to participate in any contest, sweepstakes, raffle, or lottery.

e. Directly following the telephone solicitation, go or cause an individual to go to the telephone subscriber to collect a payment or deliver any item purchased.

(d) Any telephone solicitor who makes a telephone solicitation shall do all of the following:

(1) At the beginning of the telephone solicitation, state clearly the identity of the telephone solicitor and identify the individual making the telephone solicitation.

(2) Upon request, provide the telephone subscriber with the telephone number or address at which the telephone solicitor may be contacted.

(3) If the telephone subscriber requests to be taken off the contact list of the telephone solicitor, the telephone solicitor shall take all steps necessary to remove the telephone subscriber's name and telephone number from the contact list of the telephone solicitor and stop calling the telephone subscriber within 30 business days.

(4) If the telephone subscriber objects to the telephone solicitation, terminate the telephone solicitation and promptly disconnect from the telephone line of the person receiving the call.

(5) Notwithstanding subdivision (3) of this subsection, if a telephone solicitor relies on the established business relationship of an affiliate to solicit a residential telephone subscriber whose telephone number is listed in the latest edition of the 'Do Not Call' Registry and the person called communicates a desire to receive no further telephone solicitations from the telephone solicitor, the telephone solicitor shall take all steps necessary to remove that telephone subscriber's telephone number from the contact list of the telephone solicitor and all of its affiliates, unless the telephone subscriber indicates otherwise, and the telephone solicitor and its affiliates shall stop calling the telephone subscriber at that number within 30 business days.

(e) Every telephone solicitor shall implement systems and written procedures to prevent further telephone solicitations to any telephone subscriber who has asked not to be called again at a specific number or numbers or whose telephone number appears in the 'Do Not Call' Registry. Every telephone solicitor shall train, monitor, and enforce compliance by its employees and shall monitor and enforce compliance by its independent contractors in those systems and procedures. Every telephone solicitor shall ensure that lists of telephone numbers that may not be contacted by the telephone solicitor are maintained and recorded. Compliance with the time requirements within the Telemarketing Sales Rule for incorporating and complying with updated versions of the 'Do Not Call' Registry shall constitute compliance with North Carolina law.

(f) No telephone solicitor shall violate any requirement of section 310.3 of the Telemarketing Sales Rule (Deceptive telemarketing acts or practices), section 310.4 of the Telemarketing Sales Rule (Abusive telemarketing acts or practices), and section 310.5 of the Telemarketing Sales Rule (Recordkeeping requirements).

(g) No telephone solicitor shall make a telephone solicitation before 8:00 A.M. or after 9:00 P.M.

(h) A telephone solicitor shall inquire as to whether the telephone subscriber is under the age of 18. If the telephone subscriber purports to be less than 18 years of age,

the telephone solicitor shall discontinue the call immediately. No inquiry is required where the solicitor has taken reasonable steps to remove all telephone contacts less than 18 years of age from its list of subscribers being contacted.

(i) No telephone solicitor shall knowingly use any method to block or otherwise circumvent a telephone subscriber's use of a caller identification service. A telephone solicitor who makes a telephone solicitation through the use of a private branch exchange (PBX) or other call-generating system that is not capable of transmitting caller identification information shall not be in violation of this subsection. No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other individuals or entities.

(j) A telephone solicitor or its agent that makes telephone solicitations on its behalf, provided that the telephone solicitor ensures compliance by its agent, shall keep a record for a period of 24 months from the date a telephone solicitation is made of the legal name, any fictitious name used, resident address, telephone number, and job title of each individual who makes a telephone solicitation for that telephone solicitor. If an individual who makes telephone solicitations for a telephone solicitor uses a fictitious name, the fictitious name shall be traceable only to the specific individual.

(k) Nothing in this section prohibits a telephone solicitor from contacting by nontelephonic notice a telephone subscriber whose telephone number appears in the 'Do Not Call' Registry to obtain the telephone subscriber's express invitation or permission allowing the telephone solicitor to make telephone solicitations to the telephone subscriber. A telephone solicitor shall not contact a telephone subscriber by telephone to obtain this express invitation or permission.

(l) Nothing in this section prohibits a telephone solicitor from advertising in a general medium or contacting by nontelephonic notice a telephone subscriber whose telephone number appears in the 'Do Not Call' Registry to encourage the telephone subscriber to initiate telephone calls to the telephone solicitor. A telephone solicitor shall not contact a telephone subscriber by telephone to obtain this express invitation or permission.

(m) In any dispute regarding whether a telephone subscriber has provided an express invitation or permission under subdivision (1) of subsection (c) of this section, the telephone solicitor has the burden of proving that the telephone subscriber has provided this permission by producing the original document, a facsimile document, or an electronic form, signed by the telephone subscriber, or other authentication that evidences permission. A telephone subscriber may subsequently retract express invitation or permission by indicating a desire not to receive further telephone solicitations under subsection (b) of this section.

(n) The Attorney General, in consultation with the Public Staff of the Public Utilities Commission, shall draft the contents of a bill insert that notifies consumers of the existence of the 'Do Not Call' Registry and provides information to consumers on how to use it and the other provisions of this Article to object to receiving telephone solicitations. Local exchange companies shall distribute the insert pursuant to G.S. 62-54.

(o) In the event that the federal 'Do Not Call' Registry is not operational by January 1, 2004 or ceases to operate for any reason after January 1, 2004, the Attorney General may develop, operate, and maintain such a registry for the benefit of North Carolina telephone subscribers.

(p) In telephone solicitation transactions involving telephone subscribers, no contract or purchase agreement entered into during a telephone solicitation is valid, and no money from the prospective purchaser is due thereunder, unless all the following conditions are satisfied:

(1) The contract and the sales representations that precede it are not deceptive or abusive telemarketing acts or practices as elaborated in section 310.3 of the Telemarketing Sales Rule and section 310.4 of the Telemarketing Sales Rule.

(2) The telephone solicitor has complied with the recordkeeping requirements of section 310.5 of the Telemarketing Sales Rule.

(3) The contract and the sales representations that precede it comply with all other applicable federal and State laws, including Article 1 of this Chapter.

"**§ 75-103. Restrictions on use of automatic dialing and recorded message players.**

(a) Except as provided in this section, no person may use an automatic dialing and recorded message player to make an unsolicited telephone call.

(b) Notwithstanding subsection (a) of this section, a person may use an automatic dialing and recorded message player to make an unsolicited telephone call under any one or more of the following circumstances only:

(1) All of the following are satisfied:

a. The person making the call is any of the following:

1. A tax-exempt charitable or civic organization.
2. A political party or political candidate.
3. A governmental official.
4. An opinion polling organization, radio station, television station, cable television company, or broadcast rating service conducting a public opinion poll.

b. No part of the call is used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; to obtain or provide information that will or may be used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; or to solicit or encourage the making of a charitable donation.

c. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.

(2) Prior to the playing of the recorded message, a live operator complies with G.S. 75-102(d), states the nature and length in minutes of the recorded message, and asks for and receives prior approval to play the recorded message from the person receiving the call.

(3) The unsolicited telephone call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the unsolicited telephone call.

(4) The call is placed by a person with whom the telephone subscriber has made an appointment, provided that the call is conveying information only about the appointment, or by a utility, telephone company, cable television company, satellite television company, or similar entity for the sole purpose of conveying information or news about network outages, repairs or service interruptions and confirmation calls related to restoration of service.

(5) The person plays the recorded message in order to comply with the Telemarketing Sales Rule, 16 CFR 310.4(b)(4).

"**§ 75-104. Enforcement.**

(a) The Attorney General may investigate any complaints received alleging violation of this Article. If the Attorney General finds that there has been a violation of this Article, the Attorney General may bring an action to impose civil penalties and to seek any other appropriate relief pursuant to this Chapter, including equitable relief to restrain the violation. If the Attorney General brings an action on behalf of telephone subscribers pursuant to subsection (b) of this section, the Attorney General may not seek treble damages on behalf of telephone subscribers pursuant to G.S. 75-16. Actions for civil penalties under this section shall be consistent with the provisions of this Chapter except that the penalty imposed for a violation of this Article shall be either of the following:

(1) Five hundred dollars ($500.00) for the first violation, one thousand dollars ($1,000) for the second violation, and five thousand dollars ($5,000) for the third and any other violation that occurs within two years of the first violation.

(2) One hundred dollars ($100.00) for each violation within two years of the first violation, if the telephone solicitor can show that the telephone solicitor has complied with G.S. 75-102(e) and the violations are a result of mistake.

(b) A telephone subscriber who has received a telephone solicitation from or on behalf of a telephone solicitor in violation of this Article may bring any of the following actions in civil court:

(1) An action to enjoin further violations of this Article by the telephone solicitor.

(2) An action to recover five hundred dollars ($500.00) for the first violation, one thousand dollars ($1,000) for the second violation, and five thousand dollars ($5,000) for the third and any other violation that occurs within two years of the first violation.

(c) No action may be brought pursuant to subsection (b) of this section if the telephone solicitor can show that the telephone solicitor has complied with G.S. 75-102(e) and the violations are a result of mistake.

(d) In an action brought pursuant to this Article, the court may award a prevailing plaintiff reasonable attorney's fees if the court finds the defendant willfully engaged in the act or practice and the court may award reasonable attorney's fees to a prevailing defendant if the court finds that the plaintiff knew, or should have known, that the action was frivolous and malicious.

(e) A citizen of this State may also bring an action in civil court to enforce the private rights of action established by federal law under 47 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

(f) Actions brought by telephone subscribers pursuant to this section, shall be tried in the county where the plaintiff resides at the time of the commencement of the action."

SECTION 4. G.S. 75-102(i), as enacted in Section 3 of this act, reads as rewritten:

"(i) No telephone solicitor shall knowingly use any method to block or otherwise circumvent a telephone subscriber's use of a caller identification service. ~~A telephone solicitor who makes a telephone solicitation through the use of a private branch exchange (PBX) or other call generating system that is not capable of transmitting caller identification information shall not be in violation of this subsection.~~ No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other individuals or entities."

SECTION 5. G.S. 62-54 reads as rewritten:

"**§ 62-54. Notification of opportunity to object to telephone solicitation.**

The Commission shall require each local exchange company and each competing local provider certified to do business in North Carolina to notify all ~~persons~~ telephone subscribers who subscribe to residential service from that company of the provisions of ~~G.S. 75-30.1,~~Article 4 of Chapter 75 of the General Statutes and of the federal laws and regulations allowing consumers to object to receiving telephone solicitations, ~~and of programs made available by private industry that allow consumers to have their names removed from telemarketing lists, by enclosing that information,~~ by enclosing a bill insert, drafted pursuant to G.S. 75-102(n), at least annually, in ~~every~~ at least one telephone bill mailed to ~~customers.~~ every residential customer. The Commission shall also ensure that this information is printed in a clear, conspicuous manner in the consumer information pages of each telephone directory distributed to residential customers."

SECTION 6. Should one or more of the terms or provisions of this act or any application thereof be held or declared unenforceable or invalid to any extent, the remainder of this act, and the applications thereof that have not been held or declared unenforceable or invalid, shall remain in effect. In the specific event that the provisions of G.S. 75-102, as enacted in Section 3 of this act, or G.S. 75-103, as enacted in Section 3 of this act, are declared to be preempted or otherwise unenforceable in relation to interstate telephone calls, those provisions shall remain in force and effect with respect to intra-state telephone calls.

SECTION 7. Consistent with protected speech rights of businesses that engage in telephone solicitations, the provisions of this act shall be given broad

construction so as to protect telephone subscribers from unwanted telephone solicitations and from problematic sales techniques and payment procedures often associated with these solicitations.

SECTION 8. Section 4 of this act becomes effective January 1, 2006. G.S. 62-54, as amended by Section 5 of this act, applies to all telephone directories printed on or after January 1, 2004. All other sections of this act become effective October 1, 2003, and apply to telephone solicitations made on or after that date.

SENATE BILL 872:
Unwanted Telephone Solicitations.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Thomas
Date:	April 22, 2003	**Summary by:**	Jeff Hudson
Version:	Proposed Committee Substitute S872-CSRO-15[v.1]]		Staff Attorney

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 872 would prohibit telephone solicitors from calling the telephone number of a residential telephone subscriber if the subscriber's telephone number appears in the "Do Not Call" Registry.***

BILL ANALYSIS:

Section 1 repeals G.S. 75-30, which regulates the use of automatic dialing and recorded message players. **Section 2** repeals G.S. 75-30.1, which regulates telephone solicitations.

Section 3. Recodification and Amendment of Telephone Solicitation Laws.

Section 3 creates a new Article 4 (Telephone Solicitations) in Chapter 75 of the General Statutes. This new Article 4 largely recodifies and amends the provisions of current G.S. 75-30 and G.S. 75-30.1.

G.S. 75-100. Findings.

G.S. 75-101. Definitions.

Expands the definition of "telephone solicitation" to include telephone calls for the purpose of soliciting or encouraging participation in a contest, sweepstakes, raffle, or lottery and for the purpose of obtaining a charitable donation.

Defines "Do Not Call" Registry as the registry created and maintained by the Federal Trade Commission. It also means any other telemarketing registry created by the federal government or the Attorney General.

Defines "doing business in this State" as making or causing to be made any telephone solicitation to residential telephone subscribers, whether the telephone solicitations are made from a location inside or outside North Carolina.

G.S. 75-102. Restrictions on telephone solicitations.

Current G.S. 75-30.1 prohibits a telephone solicitor from calling a residential telephone subscriber who has communicated to that telephone solicitor a desire to be taken off the telephone solicitor's contact list. New G.S. 75-102 contains this prohibition and also prohibits a telephone solicitor from calling the telephone number of a residential telephone subscriber if the subscriber's telephone number appears in the "Do Not Call" Registry.

- The "Do Not Call" Registry prohibition does not apply to the following telephone solicitations:
  - Where the telephone subscriber has given prior express invitation or permission.
  - Where an established business relationship between the telephone subscriber and the telephone solicitor exists.
  - By or on behalf of a tax-exempt nonprofit organization.

  - By or on behalf of a telephone solicitor that employs fewer than 10 direct employees and those direct employees collectively make or attempt to make no more than an average of 10 telephone solicitations per week during a calendar year.
  - For arranging face-to-face meetings.

- Provide that if a telephone solicitor makes a call to a residential telephone subscriber whose number is in the "Do Not Call" Registry based on an existing or past business relationship of an affiliate and the subscriber communicates a desire to receive no further telephone solicitations from that telephone solicitor, the telephone solicitor will remove that person's number from its contact records and the contact records of all of its affiliates within 30 days.
- Provide that a telephone solicitor may contact a residential telephone subscriber whose telephone number appears in the "Do Not Call" Registry via non-telephonic means in order to obtain the subscriber's express written permission allowing the telephone solicitor to make telephone solicitations to the subscriber.
- Provide that a telephone solicitor may advertise in a general medium or contact a residential telephone subscriber whose telephone number appears in the "Do Not Call" Registry via non-telephonic means in order to encourage the subscriber to initiate telephonic communications to the telephone solicitor.

G.S. 75-103. Restrictions on use of automatic dialing and recorded message players.

In new G.S. 75-103, current law is rewritten and recodified so that no person may use an automatic dialing and recorded message player to make an unsolicited telephone call except under one of the following circumstances:

- The person making the call (1) is a tax-exempt charitable or civic organization, a political party or candidate, a governmental official, or an opinion polling organization, radio station, cable television company, television station, or broadcast rating service conducting a public opinion poll; (2) no part of the call is used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; to obtain information that will or may be used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; or to solicit or encourage the making of a charitable donation; and (3) the person making the call identifies the name and contact information of the person calling and the nature of the call.
- Prior to playing the recorded message, a live operator complies with the general requirements for telephone solicitation calls under new G.S. 75-103, states the nature and length of the message, and asks for and receives approval to play the message.
- The call is in connection with an existing debt or contract for which payment or performance is due.
- The call is about an appointment made by the telephone subscriber.
- The call is from a utility or similar service provider about network outages, repairs, or service interruptions.
- The person plays the recorded message in order to comply with the federal Telemarketing Sales Rule.

G.S. 75-104. Enforcement.

The new statute broadens the enforcement powers of the Attorney General related to telephone solicitations and increases the amounts of civil penalties that may be imposed or recovered for violation of telephone solicitation laws. The new statute specifically:

- Authorizes the Attorney General to investigate alleged violations of the new Article 4 (Telephone Solicitations).
- Provides that the Attorney General may not seek treble damages on behalf of residential telephone subscribers if the Attorney General brings an action on behalf of the residential telephone subscribers. Authorizes the Attorney General to bring an action to impose the following civil penalties for violations of telephone solicitation laws:
    - $500 for the first violation, $1,000 for the second violation, and $5,000 for the third and each subsequent violation within two years of the first violation.
    - $100 for each violation within two years of the first violation if the telephone solicitor has established in-house procedures to comply with telephone solicitation requirements and the violations are the result of a mistake.
- Authorizes a residential telephone subscriber who has received telephone solicitations in violation of the telephone solicitation laws to bring an action to recover $500 for the first violation, $1,000 for the second violation, and $5,000 for the third and each subsequent violation within the past two years. No action may be brought by or on behalf of residential telephone subscribers under this provision if the telephone solicitor has established in-house procedures to comply with telephone solicitation requirements and the violations are the result of a mistake.
- Provides that attorney's fees may be awarded under certain circumstances.
- Authorizes a citizen of the State to bring a civil action to enforce federal telephone solicitation laws.

Section 4. Caller Identification Block

Under current law, a telephone solicitor may not knowingly block a residential telephone subscriber's caller identification service. Use of a call generating system that does not transmit caller identification information, however, is not a violation of this prohibition. Section 4 repeals the exemption for call generating systems effective January 1, 2006.

Section 5. Notification of Opportunity to Object to Telephone Solicitations

Section 5 requires both local exchange companies and competing local exchange companies to disseminate a bill insert produced by the Attorney General, in consultation with the Public Staff of the Utilities Commission, at least annually. This section applies to telephone directories printed on or after January 1, 2004.

Section 6. Severability Clause

If any provision of this act is held to be unenforceable or invalid, the remainder of the act that has not been held to be unenforceable or invalid shall remain in effect. If certain provisions of the act are declared to be preempted or otherwise unenforceable in relation to interstate telephone calls, those provisions will remain in force with respect to intra-state calls.

Section 7. Construction of Act

Consistent with protected speech rights, this act shall be construed broadly to protect residential telephone subscribers from unwanted telephone solicitations and from problematic sales techniques and payment procedures often associated with these solicitations.

Section 8. Effective Dates

Except as otherwise noted, this act is effective October 1, 2003 and applies to telephone solicitations made on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 872

AMENDMENT NO. #1
(to be filled in by
Principal Clerk)

S872-ARO-19 [v.1]

Date April 29 ,2003

Comm. Sub. [YES]
Amends Title [NO]
First Edition

Senator Hoyle

moves to amend the bill on page 4, line 44, by adding the following new subdivision after the line:

"(6) By or on behalf of a newspaper publisher, radio station, television station, or operator of a cable television system franchised under G.S. 153A-137 or G.S. 160A-319.".

SIGNED Hoyle
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED X TABLED _____

SENATE COMMITTEE SUBSTITUTE

APR 29 2003

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S

ADOPTED

SENATE BILL 872
PROPOSED COMMITTEE SUBSTITUTE S872-PCS35270-RO-15

Short Title: Unwanted Telephone Solicitations. (Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO INCREASE PROTECTIONS FOR TELEPHONE SUBSCRIBERS WHO WISH TO STOP UNWANTED TELEPHONE SOLICITATIONS AND FOR CONSUMERS WHO ENTER INTO TELEMARKETING TRANSACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-30 is repealed.

SECTION 2. G.S. 75-30.1 is repealed.

SECTION 3. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Telephone Solicitations.

"**§ 75-100. Findings.**

The General Assembly finds all of the following:

(1) The use of the telephone to market goods and services to the home is now pervasive due to the increased use of cost-effective telephone solicitation technologies and techniques.

(2) While some consumers enjoy and benefit from telephone solicitations from legitimate telephone solicitors, many others object to these telephone solicitations as an intrusive invasion of their privacy in the home.

(3) In addition, the proliferation of telephone solicitations, especially during the evening hours, creates a nuisance and a disturbance upon the home and family life of telephone subscribers during a time of day used by many families for traditional family activities.

(4) North Carolina residents should have the freedom to choose whether or not to permit telephone solicitors to contact them.

(5) Individual privacy rights, personal safety, prevention of fraud, and commercial freedom of speech and trade must be balanced in a way

that protects the privacy of individuals and permits legitimate telephone solicitation practices.

(6) Legitimate telephone solicitors have no interest in continuing to invade the privacy of those telephone subscribers who affirmatively express their desires to receive no further telephone solicitations.

(7) Many telephone subscribers who have transacted business with firms that employ telephone solicitations have experienced problems with their checking and credit card accounts being debited before they can evaluate the terms and conditions of the transaction, before they can evaluate the merchandise or service to be delivered, or without their agreement to enter into the transaction or authorize such transactions in the first place. Other telephone subscribers have had unauthorized charges placed on their telephone bill and have had their long distance carrier switched without their authorization as a result of telephone solicitations.

(8) New technologies that make telephone solicitations more cost-effective also allow for the creation of a 'Do Not Call' Registry through which North Carolina consumers can easily register their desires not to receive further telephone solicitations and telephone solicitors can easily access and employ lists of consumers who have registered those desires.

(9) The public interest requires an efficient mechanism for telephone subscribers to notify telephone solicitors that their telephone numbers cannot be called and additional protections for North Carolina residents who enter into consumer transactions initiated through telephone solicitations.

"**§ 75-101. Definitions.**

The following definitions apply in this Article:

(1) Affiliate. – A business establishment, business, or other legal entity that wholly or substantially owns, is wholly or substantially owned by, or is under common ownership with a telephone solicitor.

(2) Automatic dialing and recorded message player. – Any automatic equipment that incorporates a storage capability of telephone numbers to be called or a random or a sequential number generator capable of producing numbers to be called that, working alone or in conjunction with other equipment, disseminates a prerecorded message to the telephone number called.

(3) 'Do Not Call' Registry. – The registry created and maintained by the Federal Trade Commission pursuant to the Telemarketing Sales Rule. It also means any other telemarketing registry created by the federal government, including the Federal Communications Commission. It also means any registry created by the Attorney General pursuant to G.S. 75-102(o).

(4) Doing business in this State. – To make or cause to be made any telephone solicitation to North Carolina telephone subscribers, whether the telephone solicitations are made from a location inside North Carolina or outside North Carolina.

(5) Established business relationship. – A relationship between a seller and a consumer based on:

a. The consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and the seller or one or more of its affiliates, within the 18 months immediately preceding the date of a telephone solicitation; or

b. The consumer's inquiry or application regarding a product or service offered by the seller within the three months immediately preceding the date of a telephone solicitation.

(6) Express invitation or permission. – Any invitation or permission that is registered by the telephone subscriber on an independent form and that contains the telephone number to which calls can be placed and the signature of the telephone subscriber. The form may be completed and signed electronically.

(7) Person. – Any individual, business establishment, business, or other legal entity.

(8) Telemarketing Sales Rule. – The federal regulation promulgated by the Federal Trade Commission, 16 C.F.R. Part 310 (January 29, 2003 Edition), as amended, to implement the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, as amended.

(9) Telephone subscriber. – An individual who subscribes to a residential telephone service from a local exchange company, a competing local provider certified to do business in North Carolina, or a wireless telephone company; or the persons living or residing with that person.

(10) Telephone solicitation. – A voice communication, whether prerecorded, live, or a facsimile, over a telephone line or wireless telephone network or via a commercial mobile radio service that is made by a telephone solicitor to a telephone subscriber for the purpose of soliciting or encouraging the purchase or rental of, or investment in, property, goods, or services; obtaining or providing information that will or may be used for that purpose; soliciting or encouraging a telephone subscriber's participation in any contest, sweepstakes, raffle, or lottery, whether legal or illegal; or obtaining a charitable donation. 'Telephone solicitation' also includes those transactions that are defined as 'telemarketing' under the Telemarketing Sales Rule.

(11) Telephone solicitor. – Any individual, business establishment, business, or other legal entity doing business in this State that, directly or through salespersons or agents, makes or attempts to make telephone solicitations or causes telephone solicitations to be made.

'Telephone solicitor' also includes any party defined as a 'telemarketer' under the Telemarketing Sales Rule.

(12) Unsolicited telephone call. – A voice communication, whether prerecorded, live, or a facsimile, over a telephone line or wireless telephone network or via a commercial mobile radio service that is made by a person to a telephone subscriber without prior express invitation or permission.

"**§ 75-102. Restrictions on telephone solicitations.**

(a) Except as provided in subsection (c) of this section, no telephone solicitor shall make a telephone solicitation to a telephone subscriber's telephone number if the telephone subscriber's telephone number appears in the latest edition of the 'Do Not Call' Registry.

(b) No telephone solicitor shall make a telephone solicitation to a telephone subscriber's telephone number if the telephone subscriber previously has communicated to the telephone solicitor a desire to receive no further telephone solicitations from the telephone solicitor to that number.

(c) Subsection (a) of this section does not apply to any of the following telephone solicitations:

(1) To any telephone subscriber with the telephone subscriber's prior express invitation or permission.

(2) To any telephone subscriber with whom the telephone solicitor has an established business relationship.

(3) By or on behalf of a tax-exempt nonprofit organization.

(4) By or on behalf of a telephone solicitor that employs fewer than 10 full or part-time direct employees, the telephone solicitations are made by the direct employees, and the direct employees collectively make or attempt to make no more than an average of 10 telephone solicitations to telephone subscribers per week during a calendar year.

(5) To any telephone subscriber for the sole purpose of arranging a subsequent face-to-face meeting between the telephone solicitor and the telephone subscriber and the telephone solicitor does none of the following during the telephone solicitation:

a. Seek payment from the telephone subscriber in connection with the sale or rental of, or investment in, property, goods, or services.

b. Complete the sale or rental of, or investment in, property, goods, or services.

c. Obtain provisional acceptance of a sale, rental, or investment.

d. Obtain the agreement of the telephone subscriber to participate in any contest, sweepstakes, raffle, or lottery.

e. Directly following the telephone solicitation, go or cause an individual to go to the telephone subscriber to collect a payment or deliver any item purchased.

(d) Any telephone solicitor who makes a telephone solicitation shall do all of the following:

(1) At the beginning of the telephone solicitation, state clearly the identity of the telephone solicitor and identify the individual making the telephone solicitation.

(2) Upon request, provide the telephone subscriber with the telephone number or address at which the telephone solicitor may be contacted.

(3) If the telephone subscriber requests to be taken off the contact list of the telephone solicitor, the telephone solicitor shall take all steps necessary to remove the telephone subscriber's name and telephone number from the contact list of the telephone solicitor and stop calling the telephone subscriber within 30 business days.

(4) If the telephone subscriber objects to the telephone solicitation, terminate the telephone solicitation and promptly disconnect from the telephone line of the person receiving the call.

(5) Notwithstanding subdivision (3) of this subsection, if a telephone solicitor relies on the established business relationship of an affiliate to solicit a residential telephone subscriber whose telephone number is listed in the latest edition of the 'Do Not Call' Registry and the person called communicates a desire to receive no further telephone solicitations from the telephone solicitor, the telephone solicitor shall take all steps necessary to remove that telephone subscriber's telephone number from the contact list of the telephone solicitor and all of its affiliates, unless the telephone subscriber indicates otherwise, and the telephone solicitor and its affiliates shall stop calling the telephone subscriber at that number within 30 business days.

(e) Every telephone solicitor shall implement systems and written procedures to prevent further telephone solicitations to any telephone subscriber who has asked not to be called again at a specific number or numbers or whose telephone number appears in the 'Do Not Call' Registry. Every telephone solicitor shall train, monitor, and enforce compliance by its employees and shall monitor and enforce compliance by its independent contractors in those systems and procedures. Every telephone solicitor shall ensure that lists of telephone numbers that may not be contacted by the telephone solicitor are maintained and recorded. Compliance with the time requirements within the Telemarketing Sales Rule for incorporating and complying with updated versions of the 'Do Not Call' Registry shall constitute compliance with North Carolina law.

(f) No telephone solicitor shall violate any requirement of section 310.3 of the Telemarketing Sales Rule (Deceptive telemarketing acts or practices), section 310.4 of the Telemarketing Sales Rule (Abusive telemarketing acts or practices), and section 310.5 of the Telemarketing Sales Rule (Record keeping requirements).

(g) No telephone solicitor shall make a telephone solicitation before 8:00 A.M. or after 9:00 P.M.

(h) A telephone solicitor shall inquire as to whether the telephone subscriber is under the age of 18. If the telephone subscriber purports to be less than 18 years of age,

the telephone solicitor shall discontinue the call immediately. No inquiry is required where the solicitor has taken reasonable steps to remove all telephone contacts less than 18 years of age from its list of subscribers being contacted.

(i) No telephone solicitor shall knowingly use any method to block or otherwise circumvent a telephone subscriber's use of a caller identification service. A telephone solicitor who makes a telephone solicitation through the use of a private branch exchange (PBX) or other call-generating system that is not capable of transmitting caller identification information shall not be in violation of this subsection. No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other individuals or entities.

(j) A telephone solicitor or its agent that makes telephone solicitations on its behalf, provided that the telephone solicitor ensures compliance by its agent, shall keep a record for a period of 24 months from the date a telephone solicitation is made of the legal name, any fictitious name used, resident address, telephone number, and job title of each individual who makes a telephone solicitation for that telephone solicitor. If an individual who makes telephone solicitations for a telephone solicitor uses a fictitious name, the fictitious name shall be traceable only to the specific individual.

(k) Nothing in this section prohibits a telephone solicitor from contacting by nontelephonic notice a telephone subscriber whose telephone number appears in the 'Do Not Call' Registry to obtain the telephone subscriber's express invitation or permission allowing the telephone solicitor to make telephone solicitations to the telephone subscriber. A telephone solicitor shall not contact a telephone subscriber by telephone to obtain this express invitation or permission.

(l) Nothing in this section prohibits a telephone solicitor from advertising in a general medium or contacting by nontelephonic notice a telephone subscriber whose telephone number appears in the 'Do Not Call' Registry to encourage the telephone subscriber to initiate telephone calls to the telephone solicitor. A telephone solicitor shall not contact a telephone subscriber by telephone to obtain this express invitation or permission.

(m) In any dispute regarding whether a telephone subscriber has provided an express invitation or permission under subdivision (1) of subsection (c) of this section, the telephone solicitor has the burden of proving that the telephone subscriber has provided this permission by producing the original document, a facsimile document, or an electronic form, signed by the telephone subscriber, or other authentication that evidences permission. A telephone subscriber may subsequently retract express invitation or permission by indicating a desire not to receive further telephone solicitations under subsection (b) of this section.

(n) The Attorney General, in consultation with the Public Staff of the Public Utilities Commission, shall draft the contents of a bill insert that notifies consumers of the existence of the 'Do Not Call' Registry and provides information to consumers on how to use it and the other provisions of this Article to object to receiving telephone solicitations. Local exchange companies shall distribute the insert pursuant to G.S. 62-54.

(o) In the event that the federal 'Do Not Call' Registry is not operational by January 1, 2004, or ceases to operate for any reason after January 1, 2004, the Attorney General may develop, operate, and maintain such a registry for the benefit of North Carolina telephone subscribers.

(p) In telephone solicitation transactions involving telephone subscribers, no contract or purchase agreement entered into during a telephone solicitation is valid, and no money from the prospective purchaser is due thereunder, unless all the following conditions are satisfied:

(1) The contract and the sales representations that precede it are not deceptive or abusive telemarketing acts or practices as elaborated in section 310.3 of the Telemarketing Sales Rule and section 310.4 of the Telemarketing Sales Rule.

(2) The telephone solicitor has complied with the record keeping requirements of section 310.5 of the Telemarketing Sales Rule.

(3) The contract and the sales representations that precede it comply with all other applicable federal and State laws, including Article 1 of this Chapter.

"**§ 75-103. Restrictions on use of automatic dialing and recorded message players.**

(a) Except as provided in this section, no person may use an automatic dialing and recorded message player to make an unsolicited telephone call.

(b) Notwithstanding subsection (a) of this section, a person may use an automatic dialing and recorded message player to make an unsolicited telephone call under any one or more of the following circumstances only:

(1) All of the following are satisfied:

a. The person making the call is any of the following:

1. A tax-exempt charitable or civic organization.
2. A political party or political candidate.
3. A governmental official.
4. An opinion polling organization, radio station, television station, cable television company, or broadcast rating service conducting a public opinion poll.

b. No part of the call is used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; to obtain or provide information that will or may be used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; or to solicit or encourage the making of a charitable donation.

c. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.

(2) Prior to the playing of the recorded message, a live operator complies with G.S. 75-102(d), states the nature and length in minutes of the recorded message, and asks for and receives prior approval to play the recorded message from the person receiving the call.

(3) The unsolicited telephone call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the unsolicited telephone call.

(4) The call is placed by a person with whom the telephone subscriber has made an appointment, provided that the call is conveying information only about the appointment, or by a utility, telephone company, cable television company, satellite television company, or similar entity for the sole purpose of conveying information or news about network outages, repairs or service interruptions, and confirmation calls related to restoration of service.

(5) The person plays the recorded message in order to comply with the Telemarketing Sales Rule, 16 C.F.R. Part 310.4(b)(4).

"**§ 75-104. Enforcement.**

(a) The Attorney General may investigate any complaints received alleging violation of this Article. If the Attorney General finds that there has been a violation of this Article, the Attorney General may bring an action to impose civil penalties and to seek any other appropriate relief pursuant to this Chapter, including equitable relief to restrain the violation. If the Attorney General brings an action on behalf of telephone subscribers pursuant to subsection (b) of this section, the Attorney General may not seek treble damages on behalf of telephone subscribers pursuant to G.S. 75-16. Actions for civil penalties under this section shall be consistent with the provisions of this Chapter except that the penalty imposed for a violation of this Article shall be either of the following:

(1) Five hundred dollars ($500.00) for the first violation, one thousand dollars ($1,000) for the second violation, and five thousand dollars ($5,000) for the third and any other violation that occurs within two years of the first violation.

(2) One hundred dollars ($100.00) for each violation within two years of the first violation, if the telephone solicitor can show that the telephone solicitor has complied with G.S. 75-102(e) and the violations are a result of mistake.

(b) A telephone subscriber who has received a telephone solicitation from or on behalf of a telephone solicitor in violation of this Article may bring any of the following actions in civil court:

(1) An action to enjoin further violations of this Article by the telephone solicitor.

(2) An action to recover five hundred dollars ($500.00) for the first violation, one thousand dollars ($1,000) for the second violation, and five thousand dollars ($5,000) for the third and any other violation that occurs within two years of the first violation.

(c) No action may be brought pursuant to subsection (b) of this section if the telephone solicitor can show that the telephone solicitor has complied with G.S. 75-102(e) and the violations are a result of mistake.

(d) In an action brought pursuant to this Article, the court may award a prevailing plaintiff reasonable attorney's fees if the court finds the defendant willfully engaged in the act or practice and the court may award reasonable attorney's fees to a prevailing defendant if the court finds that the plaintiff knew, or should have known, that the action was frivolous and malicious.

(e) A citizen of this State may also bring an action in civil court to enforce the private rights of action established by federal law under 47 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

(f) Actions brought by telephone subscribers pursuant to this section, shall be tried in the county where the plaintiff resides at the time of the commencement of the action."

SECTION 4. G.S. 75-102(i), as enacted in Section 3 of this act, reads as rewritten:

"(i) No telephone solicitor shall knowingly use any method to block or otherwise circumvent a telephone subscriber's use of a caller identification service. ~~A telephone solicitor who makes a telephone solicitation through the use of a private branch exchange (PBX) or other call generating system that is not capable of transmitting caller identification information shall not be in violation of this subsection.~~ No provider of telephone caller identification services shall be held liable for violations of this subsection committed by other individuals or entities."

SECTION 5. G.S. 62-54 reads as rewritten:

"**§ 62-54. Notification of opportunity to object to telephone solicitation.**

The Commission shall require each local exchange company and each competing local provider certified to do business in North Carolina to notify all ~~persons~~ telephone subscribers who subscribe to residential service from that company of the provisions of ~~G.S. 75-30.1,~~Article 4 of Chapter 75 of the General Statutes and of the federal laws and regulations allowing consumers to object to receiving telephone solicitations, ~~and of programs made available by private industry that allow consumers to have their names removed from telemarketing lists, by enclosing that information,~~ by enclosing a bill insert, drafted pursuant to G.S. 75-102(n), at least annually, in ~~every~~ at least one telephone bill mailed to ~~customers.~~ every residential customer. The Commission shall also ensure that this information is printed in a clear, conspicuous manner in the consumer information pages of each telephone directory distributed to residential customers."

SECTION 6. Should one or more of the terms or provisions of this act or any application thereof be held or declared unenforceable or invalid to any extent, the remainder of this act, and the applications thereof that have not been held or declared unenforceable or invalid, shall remain in effect. In the specific event that the provisions of G.S. 75-102, as enacted in Section 3 of this act, or G.S. 75-103, as enacted in Section 3 of this act, are declared to be preempted or otherwise unenforceable in relation to interstate telephone calls, those provisions shall remain in force and effect with respect to intra-state telephone calls.

SECTION 7. Consistent with protected speech rights of businesses that engage in telephone solicitations, the provisions of this act shall be given broad

construction so as to protect telephone subscribers from unwanted telephone solicitations and from problematic sales techniques and payment procedures often associated with these solicitations.

SECTION 8. Section 4 of this act becomes effective January 1, 2006. G.S. 62-54, as amended by Section 5 of this act, applies to all telephone directories printed on or after January 1, 2004. All other sections of this act become effective October 1, 2003, and apply to telephone solicitations made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 991

Short Title:	Consumer's Right to Know and Act.	(Public)
Sponsors:	Senator Reeves.	
Referred to:	Commerce.	

April 3, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT STATE GOVERNMENT SHALL REQUIRE IN EVERY CONTRACT FOR THE PERFORMANCE OF TELEMARKETING SERVICES PROVISIONS THAT ONLY CITIZENS OF THE UNITED STATES AND PERSONS AUTHORIZED TO WORK IN THE UNITED STATES MAY BE EMPLOYED, AND TO PROVIDE FOR DISCLOSURE OF CERTAIN INFORMATION FROM CUSTOMER SALES AND SERVICE CENTERS.

The General Assembly of North Carolina enacts:

SECTION 1. Any contract for the performance of telemarketing services entered into by the State or by any board, commission, or institution of the State shall require that only citizens of the United States and persons authorized to work in the United States pursuant to federal law may be employed to perform such services.

SECTION 2. Any person who places a telephone call to, or receives a telephone call from, a customer sales or customer service call center has the right to know:

(1) The identification of the city, state, and country where the customer service employee is located.

(2) The name or registered alias of the customer services employee.

(3) The name of the employer of the person with whom the person is speaking.

SECTION 3. Any person who places a telephone call to, or receives a telephone call from, a customer sales or customer service call center has the right to:

(1) Speak to a qualified employee of the company or government agency the person is doing business with.

(2) Have none of their financial, credit, and identification information (including social security number and address) sent to any foreign country without express written permission.

SECTION 4. This act is effective when it becomes law.

SENATE BILL 991:
Consumer's Right to Know and Act.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Reeves
Date:	April 24, 2003	**Summary by:**	O. Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 991 would require that telemarketing services provided to the State only be provided by US citizens and persons legally authorized to work in the US. The bill also would require certain minimal disclosures by telemarketers.***

CURRENT LAW: Current law does not restrict the State from doing business with companies that use non-US citizens or illegal aliens to provide contracted services.

BILL ANALYSIS: Section 1 of the bill, in uncodified language, would require that all telemarketing services provided under a contract with the State be performed by US citizens or persons legally allowed to work in this country.

Section 2, in uncodified language, gives a person who calls or receives a call from a customer sales or customer service call center the right to know where the call center is located, the true name of the customer service employee, and the name of the employee's employer.

Section 3, in uncodified language, gives a person who calls or receives a call from a customer sales or customer service call center the right to speak to a qualified employee of the company and to have none of their personal financial or identification information sent to a foreign country without their written permission.

The bill does not address the consequences for violations of any of these provisions.

EFFECTIVE DATE: The bill is effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 29, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Gillam	Public Staff - NCUC
Tony Wike	Public Staff - NCUC
Mike Latta	AARP
Lorinzo L. Joyner	nc Utilities Commission
Kim R. Cocklin	Piedmont Nat. Gas Company
Don Harrow	" " " "
Paul Thomas	HGAC
Larry Bewley	LBA
Erin Culbreth	LBA
Sen J. Ervin, IV	N. C. Utilities Commission
Kiki Dunton	NCPIRG

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 29, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob Schofield	NC Justice Center
Alene Ogles	AARP
Sandra Lee	NAO
Teresa Tilley	NCUC
JoNola Brown	NC UC
Bryan Howard	Bell Smith
Carolyn Jarman	DA
Dick Carlton	Carlton + Alexander PLLC
Sarah Toney	Sen. Ideris Office
Mike Wilkins	Utilities Commission
Kean Nelson	Alley Associates

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

April 29, 2003 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Van Dyke	BST
[signature]	UCAAP
Bill Pittman	Pittman Law Firm
Kevin Howell	Governor's Office
John McMillan	MFHS
James Andrews	NC State AFL-CIO
Glenn Wells	Hoffman-La Roche
[signature]	[signature]
Robert Jackson	AARP
Steve Roberts	AARP
Helen Savage	AARP

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 29, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stan Pace	Verizon
Joe Foster	Verizon
Don Hoover	NCUC STAFF
Bob Bennink	NCUC Staff
Len Anthony	Progress Energy
John Hughes	APEC
Keith Burgess	NCCBT
PSP	NCFB
Colleen Kochanek	Hafer & Caldwell, P.A.
Teri Saylor	NCPA
Ted Veeder	Chapel Hill News
Mark Smith	DSE
Brad Lamb	NC Consumers Council
Kyle Mattox	Bell South

VISITOR REGISTRATION SHEET

Senate Commerce Committee — **Name of Committee**

April 29, 2003 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	Bode Call & Stroupe
	Bell South
J. Kerr	NCUC
Stephanie Simpson	NC Assn. of REALTORS, INC
	Sprint
Richard C. Hatch	AARP
	Sprint
Bill McAulay	PSNC Energy
	Bank of America
Roy Williams	UNC - CH
Paul Stark	NC BANKERS
	Int'l Citizens Bank

VISITOR REGISTRATION SHEET

Senate Commerce Committee — April 29, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Dalton	Bone & Associates
Bruce Thompson	Parker Poe Adams & Bernstein
Dwight Allen	NC Telephone Coalition
Scott Sands	WCSR
Elizabeth [illegible]	Metrocast
Andy Ellen	NCCMA
Ron Ottavio	Wachovia
Amy Fullbright	Hunton & Williams
Tom Sri	NCCMA
Gene Upchurch	Progress Energy
Lisa Piercy	Duke Energy
Roger Bone	Bone Associates
James Ramsey	NCACC
Dana Simpson	Smith Anderson

Ed TURLINGTON	Brooks Pierce
SUSAN SMITH	NC CWA POLITICAL COUNCIL
Doris Weaver	NC CWA Political Council
TERRY LAWLER	MCI
John Pollicastro	AT&T
Jack Cogdell	USLec
David Stoller	STATE FARM
Camille Stell	Kimrey Conniff

SENATE COMMERCE COMMITTEE
Thursday, May 1, 2003 at 11:55 a.m.
Senate Chamber, Legislative Building
MINUTES

The Senate Commerce Committee met at 11:55 a.m. on Thursday, May 1, 2003, in the Senate Chamber of the Legislative Building. Thirteen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles explained the history of the committee's consideration of SB 661, Health Care Information Privacy, and introduced Senator Eric Reeves to explain the bill. Senator David Hoyle moved the adoption of a committee substitute. The motion carried. Senator Reeves recommended the committee support the committee substitute. Senator Rand moved an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

The meeting adjourned at 12:00 noon.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Thursday, May 01, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **661** Health Care Information Privacy.

Draft Number:	PCS 85233
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 661

Short Title:	Health Care Information Privacy.	(Public)
Sponsors:	Senators Reeves; Clodfelter, Dalton, Garrou, Gulley, Hagan, Kinnaird, Lucas, Malone, Metcalf, and Rand.	
Referred to:	Commerce.	

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT HEALTH INFORMATION PRIVACY BY PROHIBITING USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR PURPOSES OF MARKETING WITHOUT WRITTEN AUTHORIZATION OF THE INDIVIDUAL, AND BY LIMITING THE USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION WITHOUT INDIVIDUAL AUTHORIZATION FOR CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding the following new Chapter to read:

"**Chapter 132A.**

"**Privacy of Health Information.**

"Article 1.

"Use or Disclosure of Protected Health Information.

"**§ 132A-1. Purpose.**

The purpose of this Article is to provide greater patient privacy protections regarding the use or disclosure of protected health information for marketing purposes than are provided under the Health Insurance Portability and Accountability Act and Privacy Standards, and regulations adopted thereunder.

"**§ 132A-2. Definitions.**

(a) Unless otherwise defined in this Article, each term used in this Article has the meaning and application assigned by the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) As used in this Article:

(1) 'Health Insurance Portability and Accountability Act and Privacy Standards' means the privacy requirements of the Administrative Simplification subtitle of the Health Insurance Portability Act of 1996

(Pub. L. 104-191) and the final rules adopted December 28, 2000, as modified August 14, 2002, and any subsequent amendments.

(2) 'Marketing' means to make a communication about a product or service to encourage recipients of the communication to purchase or use the product or service, but does not include communications made as part of the treatment of a patient for the purpose of furthering treatment unless the covered entity receives direct or indirect remuneration from a third party for making the communication.

"**§ 132A-3. Protection of private health information.**

(a) Except in accordance with subsection (b) of this section, a covered entity shall not:

(1) Disclose protected health information to any entity for marketing the products or services of the entity; or

(2) Use protected health information in its possession to provide marketing services to any entity.

(b) A covered entity may provide marketing services to a pharmaceutical company if the covered entity:

(1) Provides clear and conspicuous notice to the individual involved concerning its disclosure practices for all protected health information collected or created with regard to the individual; and

(2) Obtains the consent of the individual involved to use the information and that consent is manifested by an affirmative act in a written communication which only references and applies to the specific marketing purpose for which the information is to be used.

(c) Applicability. – This Article does not affect the validity of another law of this State that provides greater confidentiality for information made confidential by this Article.

"**§ 132A-4. Use or disclosure of protected health information for public health activities and purposes to persons subject to the jurisdiction of the Food and Drug Administration.**

A covered entity shall not use or disclose protected health information without the written consent of the individual who is the subject of the protected health information to persons subject to the jurisdiction of the Food and Drug Administration except for the following public health activities or purposes:

(1) To report adverse events (or similar reports with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations if the disclosure is made to the person required or directed to report the information to the Food and Drug Administration;

(2) To track products if the disclosure is made to a person required or directed by the Food and Drug Administration to track the product;

(3) To enable product recalls, repairs, or replacement (including locating and notifying individuals who have received products of product recalls, withdrawals, or other problems); or

(4) To conduct post-marketing surveillance to comply with requirements or at the direction of the Food and Drug Administration.

"**§ 132A-5. Enforcement.**

(a) Injunctive Relief. – The Attorney General of this State may institute an action for injunctive relief to restrain a violation of this Article.

(b) Civil Penalties. – In addition to the injunctive relief provided by this section, the Attorney General may institute an action for civil penalties against a covered entity for a violation of this Article. A civil penalty assessed under this section may not exceed three thousand dollars ($3,000) for each violation. If the court in which an action under this subsection is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed two hundred fifty thousand dollars ($250,000).

(c) Disciplinary Action. – In addition to the penalties prescribed under this section, a violation of this Article by an individual or facility that is licensed by an agency of this State is subject to investigation and disciplinary proceedings, including probation or suspension by the licensing agency. If the licensing agency finds evidence that the violations of this Article constitute a pattern or practice, the licensing agency may revoke the individual's or facility's license.

(d) Availability of Other Remedies. – This Article does not affect any right of a person under other law to bring a cause of action or otherwise seek relief with respect to conduct that is a violation of this Article."

SECTION 2. This act becomes effective January 1, 2004.

SENATE BILL 661:
Health Care Information Privacy

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Reeves
Date:	April 12, 2003	**Summary by:**	Kory J. Goldsmith
Version:	1st Edition		Committee Counsel

SUMMARY: ***SB661 more strictly regulates the "marketing" of protected health information than what will be allowed under federal law. The Health Insurance Portability and Accountability Act (HIPAA) is the federal law that regulates the marketing of private health information (PHI).***

BILL ANALYSIS: Like HIPAA, SB661 defines marketing as a communication about a product or service to encourage recipients to purchase or use the product or service. Also like HIPAA, marketing does not include communications made as part of the treatment of a patient. **Unlike** HIPAA, if the covered entity receives direct or indirect remuneration from a third party for making the communication, then even communications made as part of the treatment of a patient constitute marketing.

A covered entity is prohibited from:

- disclosing PHI to another entity for the purpose of marketing the products or services of the other entity; or
- using PHI in its possession to provide marketing services to another entity.

A covered entity may provide marketing services to a pharmaceutical company if the covered entity:

- provides clear and conspicuous notice regarding its disclosure practices; and
- obtains prior written consent.

A covered entity may provide PHI to an entity under the jurisdiction of the Food and Drug Administration (pharmaceutical researchers) for the following purposes:

- to report adverse effects, product defects, or biological product deviations
- to tract products provided there is disclosure to person appointed or required to do the tracking by the FDA
- for product recalls, repairs, and replacement
- to conduct post-marketing surveillance to comply with FDA requirements.

A violation of the law could result in injunctive relief and a civil penalty not to exceed $3,000 for each violation. Where a court finds a pattern or practice of violations, it may impose a penalty up to $250,000. An individual may also be subject to investigation and disciplinary proceedings, and license suspension or revocation by the appropriate licensing agency.

CURRENT (FEDERAL) LAW: The general rule under HIPAA is that covered entities must obtain an individual's authorization before using or disclosing protected health information ("PHI") for marketing purposes. "Marketing" is a communication about a product or service the purpose of which is to encourage recipients of the communication to purchase or use the product or service. Activities that constitute treatment, payment, and health care operations are not marketing. There are three exceptions to the definition of marketing:

- Communications made by a covered entity for the purpose of describing its network, the scope of services it provides, and the services for which it pays.

- Communications tailored by the provider to the circumstances of a particular individual for treatment purposes or furthering the individual's care. Includes activities such as referrals, prescriptions, recommendations, and other communications that address how a product or service may relate to the individuals health.

- Communications made by the provider or health plan to an individual in the course of managing the treatment of that individual or for recommending alternative treatments, therapies, providers, or settings of care. Permits covered entities to discuss products or services in the course of managing an individual's care or providing treatment.

Even if a situation falls within the definition of marketing, there are three exceptions to the requirement that a covered entity first obtain the individual's authorization before using the PHI for marketing purposes. These are:

- Face-to-face communications with the individual, for example, a physician tells her patient about a product or service during the office visit.

- Communications involving products or services of "nominal value". Nominal value is not defined in the rule, but is thought to mean something like a coupon, rebate, or toothbrush.

- Communications involving health-related products or services of the covered entity or of a third party, provided that the communication:

    - identifies the covered entity as the "marketer"

    - reveals whether the covered entity receives any remuneration from a third-party for making the communication;

    - tells the individual how to opt-out of future communications; and

    - if PHI was used to target an individual about a particular product or service, discloses why the individual was chosen and how the product or service could benefit him/her.

        - PLUS - The covered entity determines, prior to making the targeted communication, that the product or service may be beneficial to the health of the type or class of individual targeted.

The act is effective when it becomes law.

S661-SMRC-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 661
PROPOSED COMMITTEE SUBSTITUTE S661-CSRC-43 [v.2]

5/1/2003 10:52:09 AM

Short Title: Health Care Information Privacy. (Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT HEALTH INFORMATION PRIVACY BY PROHIBITING USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR PURPOSES OF MARKETING WITHOUT WRITTEN AUTHORIZATION OF THE INDIVIDUAL.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding the following new Chapter to read:

"**Chapter 132A.**

"**Privacy of Health Information.**

"Article 1.

"Use or Disclosure of Protected Health Information.

"**§ 132A-1. Purpose.**

The purpose of this Article is to provide greater patient privacy protections regarding the use or disclosure of protected health information for marketing purposes than are provided under the Health Insurance Portability and Accountability Act and Privacy Standards, and regulations adopted thereunder.

"**§ 132A-2. Definitions.**

(a) Unless otherwise defined in this Article, each term used in this Article has the meaning and application assigned by the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) As used in this Article:

(1) 'Health Insurance Portability and Accountability Act and Privacy Standards' means the privacy requirements of the Administrative Simplification subtitle of the Health Insurance Portability Act of 1996 (Pub. L. 104-191) and the final rules adopted December 28, 2000, as modified August 14, 2002, and any subsequent amendments.

(2) 'Marketing' or 'to market' means to make a communication about a product or service to encourage recipients of the communication to purchase or use the product of service, but does not include communications:

a. made as part of the treatment of an individual for the purpose of furthering treatment;

b. for care coordination and managing the treatment of the individual, including communications made for the purpose of furthering the individual's adherence to a prescription drug medication or for the purpose of recommending alternative treatments or settings of care to the individual, and including questionnaires and surveys sent directly to or used diretly with individuals; or

c. by a health benefit plan to it enrollees about the plan of benefits and replacements or enhancements to the benefit plan, the network of providers, or value added services available to its enrollees.

"**§ 132A-3. Protection of private health information.**

(a) A covered entity shall not, in the marketing of its products or services, disclose protected health information or use protected health information in its possession to market the products or service of another entity.

(b) A covered entity may use protected health information to market its non-health related products and services to an individual only if the covered entity:

(1) Obtains the consent of the individual; and

(2) Provides clear and conspicuous notice to the individual involved concerning its disclosure practices for that individual's protected health information.

(c) Applicability. – This Article does not affect the validity of another law of this State that provides greater confidentiality for information made confidential by this Article.

"**§ 132A-4. Enforcement.**

(a) Injunctive Relief. – The Attorney General of this State may institute an action for injunctive relief to restrain a violation of this Article.

(b) Civil Penalties. – In addition to the injunctive relief provided by this section, the Attorney General may institute an action for civil penalties against a covered entity for a violation of this Article. A civil penalty assessed under this section may not exceed five thousand dollars ($5,000) for each violation. If the court in which an action under this subsection is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed two hundred fifty thousand dollars ($250,000).

(c) Availability of Other Remedies. – This Article does not affect any right of a person under other law to bring a cause of action or otherwise seek relief with respect to conduct that is a violation of this Article."

SECTION 2. This act becomes effective January 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 661
PROPOSED COMMITTEE SUBSTITUTE S661-PCS85233-RC-43

Short Title: Health Care Information Privacy. (Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO PROTECT HEALTH INFORMATION PRIVACY BY PROHIBITING USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR PURPOSES OF MARKETING WITHOUT WRITTEN AUTHORIZATION OF THE INDIVIDUAL.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding the following new Chapter to read:

"**Chapter 132A.**

"**Privacy of Health Information.**

"Article 1.

"Use or Disclosure of Protected Health Information.

"**§ 132A-1. Purpose.**

The purpose of this Article is to provide greater patient privacy protections regarding the use or disclosure of protected health information for marketing purposes than are provided under the Health Insurance Portability and Accountability Act and Privacy Standards and regulations adopted thereunder.

"**§ 132A-2. Definitions.**

(a) Unless otherwise defined in this Article, each term used in this Article has the meaning and application assigned by the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) As used in this Article:

(1) 'Health Insurance Portability and Accountability Act and Privacy Standards' means the privacy requirements of the Administrative Simplification subtitle of the Health Insurance Portability Act of 1996 (Pub. L. 104-191) and the final rules adopted December 28, 2000, as modified August 14, 2002, and any subsequent amendments.

(2) 'Marketing' or 'to market' means to make a communication about a product or service to encourage recipients of the communication to purchase or use the product of service, but does not include communications:

a. Made as part of the treatment of an individual for the purpose of furthering treatment;

b. For care coordination and managing the treatment of the individual, including communications made for the purpose of furthering the individual's adherence to a prescription drug medication or for the purpose of recommending alternative treatments or settings of care to the individual, and including questionnaires and surveys sent directly to or used directly with individuals; or

c. By a health benefit plan to its enrollees about the plan of benefits and replacements or enhancements to the benefit plan, the network of providers, or value-added services available to its enrollees.

"**§ 132A-3. Protection of private health information.**

(a) A covered entity shall not, in the marketing of its products or services, disclose protected health information or use protected health information in its possession to market the products or service of another entity.

(b) A covered entity may use protected health information to market its nonhealth-related products and services to an individual only if the covered entity:

(1) Obtains the consent of the individual; and

(2) Provides clear and conspicuous notice to the individual involved concerning its disclosure practices for that individual's protected health information.

(c) Applicability. – This Article does not affect the validity of another law of this State that provides greater confidentiality for information made confidential by this Article.

"**§ 132A-4. Enforcement.**

(a) Injunctive Relief. – The Attorney General of this State may institute an action for injunctive relief to restrain a violation of this Article.

(b) Civil Penalties. – In addition to the injunctive relief provided by this section, the Attorney General may institute an action for civil penalties against a covered entity for a violation of this Article. A civil penalty assessed under this section may not exceed five thousand dollars ($5,000) for each violation. If the court in which an action under this subsection is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed two hundred fifty thousand dollars ($250,000).

(c) Availability of Other Remedies. – This Article does not affect any right of a person under other law to bring a cause of action or otherwise seek relief with respect to conduct that is a violation of this Article."

SECTION 2. This act becomes effective January 1, 2004.

Commerce
Tuesday, May 13, 2003, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Bills

HB 475	Registration of Birth & Death Certificates.	Representative Alexander
HB 999	Toner/Inkjet Cartridges.	Representative Hackney Representative Sauls
HB 1065	Redevelopment Comm. Property Conveyance.	Representative Allen
SB 655	Amend Locksmith Act/Criminal Checks/Fees.	Senator Metcalf

Presentations

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, May 13, 2003 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, May 13, 2003, in Room 1027 of the Legislative Building. Fifteen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced the pages: Dominique Lindsay of Garner, sponsored by Senator Vernon Malone; and Pauline DeVerteuil of Salemburg, sponsored by Senator Charles Albertson.

Senator Soles introduced Representative Martha Alexander to explain HB 475, Registration of Birth & Death Certificates. Senator Tony Rand moved a favorable report of the bill. The motion carried.

Senator Soles introduced Representative Lucy Allen to explain HB 1065, Redevelopment Comm. Property Conveyance. Senator Rand moved a favorable report of the bill. The motion carried.

Senator Soles introduced Senator Steve Metcalf to explain SB 655, Amend Locksmith Act/Criminal Checks/Fees. Senator Purcell moved the adoption of a proposed committee substitute. The motion carried. Ms. Laura Bussy, Chair of the Locksmith Licensing Board, was recognized to explain the bill further. Senator Metcalf moved an unfavorable report of the bill, favorable as to the committee substitute. The motion carried.

Senator Soles introduced Representative Joe Hackney to explain HB 999, Toner/Inkjet Cartridges. Senator Soles told committee members a proposed committee substitute had been handed out; however it was not adopted. Senator Harris Blake, representing his district, spoke in favor of the bill. Mr. Alexander Sands, representing Lexmark, spoke in opposition to the bill. Because Senator Soles knew of others who wanted to speak on the bill but who could not attend the meeting, he did not have the committee vote on the bill. It will be taken up again at a later meeting.

The meeting adjourned at 11:35 a.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, May 13, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **475** Registration of Birth & Death Certificates.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1065** Redevelopment Comm. Property Conveyance.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Wednesday, May 14, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **655** Amend Locksmith Act/Criminal Checks/Fees.

Draft Number:	PCS 35284
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 475

Short Title:	Registration of Birth & Death Certificates.	(Public)
Sponsors:	Representatives Alexander; Earle, C. Wilson, Cunningham, and McMahan.	
Referred to:	Judiciary I.	

March 13, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTE PERTAINING TO REGISTRATION OF BIRTH AND DEATH CERTIFICATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-97 reads as rewritten:

"**§ 130A-97. Duties of local registrars.**

The local registrar shall:

(1) Administer and enforce provisions of this Article and the rules, and immediately report any violation to the State Registrar;

(2) Furnish certificate forms and instructions supplied by the State Registrar to persons who require them;

(3) Examine each certificate when submitted to determine if it has been completed in accordance with the provisions of this Article and the rules. If a certificate is incomplete or unsatisfactory, the responsible person shall be notified and required to furnish the necessary information. All birth and death certificates shall be typed or written legibly in permanent ~~black or blue-black ink;~~ black, blue-black, or blue ink;

(4) Enter the date on which a certificate is received and sign as local registrar;

(5) Transmit to the register of deeds of the county a copy of each certificate registered within seven days of receipt of a birth or death certificate. The copy transmitted shall include the race of the father and mother if that information is contained on the State copy of the certificate of live birth. Copies transmitted may be on blanks furnished by the State Registrar or may be photocopies made in a manner approved by the register of deeds. The local registrar may also keep a copy of each certificate for no more than two years;

(6) On the fifth day of each month or more often, if requested, send to the State Registrar all original certificates registered during the preceding month; and

(7) Maintain records, make reports and perform other duties required by the State Registrar."

SECTION 2. This act is effective when it becomes law.

HB 475:
Registration of Birth & Death Certificates.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Alexander
Date:	May 13, 2003	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: ***The bill would allow the local registrar to accept birth and death certificates written in blue ink.***

CURRENT LAW: The local registrar is the local health director, and is required to transmit a copy of the death or birth certificate to the register of deeds within seven (7) days of receipt by the local registrar. The register of deeds is required to file and preserve the copies of the birth and death certificates furnished by the local registrar. Currently, the local registrar is restricted to accepting for recordation only those birth and death certificates written in black or blue-black ink.

BILL ANALYSIS:

The bill would add the color 'blue' to the colors of ink in which a birth or death certificate may be written and accepted for recordation.

BACKGROUND: The physician declaring the reason of death signs the death certificate. At times, the physicians will use blue ink for the signature. The local registrar nor the register or deeds can accept the death certificate for recordation when signed in blue ink.

EFFECTIVE DATE: The bill would become effective when it becomes law.

This summary was contributed to by R. Erika Churchill, Research Division.

HOUSE BILL 1065: Redevelopment Commission Property Conveyance.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Lucy Allen
Date:	May 13, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Second Edition		

SUMMARY: ***The House Bill 1065 would expand the authority of a redevelopment commission to convey property in a designated redevelopment area to allow property to be sold to a public or private entity that carries out a public purpose.***

CURRENT LAW: Currently, a redevelopment commission may sale, exchange or transfer property owned by the commission in a redevelopment area through the advertisement for sealed bids (G.S. 160A-268), negotiated offer, advertisement, and upset bids (G.S. 160A-269), public auction (G.S. 160A-270), and exchange of property (G.S. 160A-271), in the same manner as a city may dispose of city property. The commission, subject to approval of the municipality, may also convey real property to a nonprofit operated for educational, scientific, literary, cultural, charitable or religious purposes for the purposes of the organization at a price agreed to by the commission and the nonprofit that is not less than the fair market value of the property as agreed to by three professional real estate appraisers. (G.S. 160A-514(e)(4)).

BILL ANALYSIS: Section 1 of the bill would amend the law that specifies how a redevelopment commission may convey its property to permit a commission to convey its property by sale to entities carrying out a public purpose, as cities are allowed to do under G.S. 160A-279 (copy attached). The commission may attach any conveyance covenants or conditions that assure that the property will be put to a public use by the recipient entity.

Section 2 makes a conforming change for the authority granted in Section 1.

EFFECTIVE DATE: The bill would become effective when it becomes law.

§ 160A-279. Sale of property to entities carrying out a public purpose; procedure.

(a) Whenever a city or county is authorized to appropriate funds to any public or private entity which carries out a public purpose, the city or county may, in lieu of or in addition to the appropriation of funds, convey by private sale to such an entity any real or personal property which it owns; provided no property acquired by the exercise of eminent domain may be conveyed under this section; provided that no such conveyance may be made to a for-profit corporation. The city or county shall attach to any such conveyance covenants or conditions which assure that the property will be put to a public use by the recipient entity. The procedural provisions of G.S. 160A-267 shall apply. Provided, however, that a city or county may convey to any public or private entity, which is authorized to receive appropriations from a city or county, surplus automobiles without compensation or without the requirement that the automobiles be used for a public purpose. Provided, however, this conveyance is conditioned upon conveyance by the public or private entity to Work First participants selected by the county department of social services under the rules adopted by the local department of social services. In the discretion of the public or private entity to which the city or county conveys the surplus automobile, when that entity conveys the vehicle to a Work First participant it may arrange for an appropriate security interest in the vehicle, including a lien or lease, until such time as the Work First participant satisfactorily completes the requirements of the Work First program. This subsequent conveyance by the public or private entity to the Work First participant may be without compensation. The participant may be required to pay for license, tag, and/or title.

(b) Notwithstanding any other provision of law, this section applies only to cities and counties and not to any other entity which this Article otherwise applies to.

(c) Repealed by Session Laws 1993, c. 491, s. 1.

(d) This section does not limit the right of any entity to convey property by private sale when that right is conferred by another law, public, or local. (1987, c. 692, s. 1; 1993, c. 491, s. 1; 1998-195, s. 1.)

§ 160A-267. Private sale.

When the council proposes to dispose of property by private sale, it shall at a regular council meeting adopt a resolution or order authorizing an appropriate city official to dispose of the property by private sale at a negotiated price. The resolution or order shall identify the property to be sold and may, but need not, specify a minimum price. A notice summarizing the contents of the resolution or order shall be published once after its adoption, and no sale shall be consummated thereunder until 10 days after its publication. (1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 24.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H **2**

HOUSE BILL 1065

Committee Substitute Favorable 4/24/03

Short Title: Redevelopment Comm. Property Conveyance. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE AUTHORITY AND PROCEDURE FOR A REDEVELOPMENT COMMISSION TO CONVEY CERTAIN PROPERTY IN A DESIGNATED REDEVELOPMENT AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-514(c) reads as rewritten:

"(c) A commission may sell, exchange, or otherwise transfer the fee or any lesser interest in real property in a redevelopment project area to any redeveloper for any public or private use that accords with the redevelopment plan, subject to such covenants, conditions and restrictions as the commission may deem to be in the public interest and in furtherance of the purposes of this Article. In the sale, exchange, or transfer of property, the commission shall ~~follow the~~ exercise the authority and procedure set out in G.S. 160A-268, ~~G.S.~~ 160A-269, ~~G.S. 160A-270 or G.S. 160A-271~~ 160A-270, 160A-271, or 160A-279 for the disposition of property by a city council. Provided, however, that all sales, exchanges, or other transfers of real property from July 9, 1985, to December 31, 1987, in accordance with the provisions of this section prior to its revision on July 9, 1985, shall be and are valid in all respects."

SECTION 2. G.S. 160A-514(e) reads as rewritten:

"(e) In carrying out a redevelopment project, the commission may:

(1) With or without consideration and at private sale convey to the municipality in which the project is located such real property as, in accordance with the redevelopment plan, is to be laid out into streets, alleys, and public ~~ways;~~ ways.

(2) With or without consideration, convey at private sale, grant, or dedicate easements and rights-of-way for public utilities, sewers, streets and other similar facilities, in accordance with the redevelopment ~~plan; and~~ plan.

(3) With or without consideration and at private sale convey to the municipality, county or other appropriate public body such real

property as, in accordance with the redevelopment plan, is to be used for parks, schools, public buildings, facilities or other public purposes.

(4) ~~After~~ In addition to other authority contained in this section, after a public hearing advertised in accordance with the provisions of G.S. 160A-513(e), and subject to the approval of the governing body of the municipality, convey to a nonprofit association or corporation organized and operated exclusively for educational, scientific, literary, cultural, charitable or religious purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, such real property as, in accordance with the redevelopment plan, is to be used for the purposes of such associations or corporations. Such conveyance shall be for such consideration as may be agreed upon by the commission and the association or corporation, which shall not be less than the fair value of the property agreed upon by a committee of three professional real estate appraisers currently practicing in the State, which committee shall be appointed by the commission. All conveyances made under the authority of this subsection shall contain restrictive covenants limiting the use of property so conveyed to the purposes for which the conveyance is made."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 655

Short Title:	Amend Locksmith Act/Criminal Checks/Fees.	(Public)
Sponsors:	Senator Metcalf.	
Referred to:	Commerce.	

April 1, 2003

A BILL TO BE ENTITLED

AN ACT MAKING CLARIFYING CHANGES TO THE DEFINITION OF LOCKSMITH SERVICES UNDER THE LOCKSMITH LICENSING ACT, AMENDING THE POWERS OF THE NORTH CAROLINA LOCKSMITH LICENSING BOARD TO ALLOW THE BOARD TO EMPLOY AN ATTORNEY AND ALLOW THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS UPON THE BOARD'S REQUEST, AUTHORIZING THE BOARD TO REQUIRE CRIMINAL HISTORY RECORD CHECKS OF PERSONS APPLYING TO PRACTICE LOCKSMITHING IN THIS STATE, AMENDING THE LOCKSMITH LICENSING ACT TO ALLOW THE BOARD TO REGULATE APPRENTICE LOCKSMITHS AND COLLECT FEES, CLARIFYING THE EXEMPTION FOR TOWING SERVICES UNDER THE ACT, AND ALLOWING THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY OF APPLICANTS FOR LICENSURE OR APPRENTICE DESIGNATION UPON THE REQUEST OF THE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74F-4(5) reads as rewritten:

"(5) Locksmith services. – Repairing, rebuilding, rekeying, repinning, servicing, adjusting, or installing locks, mechanical or electronic locking devices, access control devices, egress control devices, ~~safes,~~ vaults, and safe-deposit boxes for compensation or other consideration, including services performed by safe technicians."

SECTION 2. G.S. 74F-6 is amended by adding the following new subdivisions to read:

"The Board shall have the power and duty to:

...

(12a) Employ an attorney to assist or represent the Board in enforcing this Chapter.

...

(15) Request that the Department of Justice conduct criminal history record checks of applicants for licensure and apprenticeships pursuant to G.S. 114-19.8A."

SECTION 3. G.S. 74F-7 reads as rewritten:

"**§ 74F-7. Qualifications for license.**

An applicant shall be licensed as a locksmith if the applicant meets all of the following qualifications:

(1) Is of good moral and ethical character.

(2) Is at least 18 years of age.

(3) Successfully completes an examination administered by the Board that measures the knowledge and skill of the applicant in locksmith services and the laws applicable to licensed locksmiths.

(4) Passes a criminal history record check pursuant to G.S. 74F-18.

~~(4)~~(5) Pays the required fee under G.S. 74F-9."

SECTION 4. Chapter 74F of the General Statutes is amended by adding a new section to read:

"**§ 74F-7A. Apprentices.**

(a) An applicant may receive an apprentice designation if the applicant meets all of the following requirements:

(1) Is of good moral and ethical character.

(2) Is at least 18 years of age.

(3) Passes a criminal history record check pursuant to G.S. 74F-18.

(4) Pays the required fee under G.S. 74F-9.

(b) After an applicant has satisfied the requirements in subsection (a) of this section, the apprentice may practice as an apprentice locksmith under the supervision of a licensed locksmith. The Board shall issue each apprentice a colored badge card that identifies the individual as an apprentice and includes the apprentice designation. The Board shall establish requirements for apprentice supervision.

(c) An apprentice may have the apprentice designation for no greater than three years. On or before the three-year period expires, the apprentice shall take the locksmith licensure examination administered by the Board. If the apprentice fails to take the examination within the three-year period or fails the exam and does not retake the examination on or before the three-year period expires, the apprentice shall not receive licensure and shall not be granted another apprenticeship.

(d) If an apprentice terminates employment with a licensed locksmith under which the apprentice originally received his or her apprenticeship, the apprentice shall find employment with another licensed locksmith to maintain the apprentice designation and shall pay a transfer fee pursuant to G.S. 74F-9.

Each licensed locksmith shall have no more than two apprentices at one time. However, a licensed locksmith shall have a 90-day grace period within which to accommodate more than two apprentices if the apprentice is newly hired as a result of a previous termination of employment or the death of a licensed locksmith that supervised the apprentice. The licensed locksmith shall contact the Board once the locksmith

terminates the additional apprentice and the licensed locksmith shall be legally responsible for the apprentice's work until the Board is notified otherwise."

SECTION 5. G.S. 74F-9 reads as rewritten:

"**§ 74F-9. Fees.**

The Board shall establish fees not exceeding the following amounts:

(1)	Issuance of a license	$100.00
(2)	Renewal of a license	$100.00
(3)	Examination	$200.00
(4)	Reinstatement	$150.00
(5)	Late fees	~~$150.00~~.$150.00
(6)	Apprentice fee	$100.00
(7)	Apprentice transfer fee	$25.00."

SECTION 6. G.S. 74F-16(4) reads as rewritten:

"The provisions of this Chapter do not apply to:

...

(4) An employee of a towing ~~service,~~service or an automotive repair business providing services in the normal course of its business, a repossessor, a taxi cab service, a motor vehicle dealer as defined in G.S. 20-286(11), or a motor club as defined in G.S. 58-69-1 when opening automotive locks in the normal course of their duties, so long as the employee does not represent himself or herself as a locksmith.

..."

SECTION 7. Chapter 74F of the General Statutes is amended by adding a new section to read:

"**§ 74F-18. Criminal history record checks of applicants for licensure or apprentice designation.**

(a) Definitions. – The following definitions shall apply in this section:

(1) Applicant. – A person applying for licensure as a locksmith pursuant to G.S. 74F-7 or apprentice designation pursuant to G.S. 74F-7A.

(2) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice locksmithing. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20,

Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) All applicants for licensure or apprentice designation shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure or apprentice designation to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

If, after reviewing the factors, the Board determines that the grounds set forth in subdivision (1), (2), (3), (4), (5), or (6) of this subsection exist, the Board may deny licensure or apprentice designation of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an

exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure or apprentice designation to an applicant based on information provided in the applicant's criminal history record check."

SECTION 8. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.8A. Criminal record checks of applicants for licensure or apprentice designation.**

The Department of Justice may provide to the North Carolina Locksmith Licensing Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure as a locksmith or an apprentice under Chapter 74F of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 9. This act is effective when it becomes law.

SENATE BILL 655:
Amend Locksmith Act/Criminal Checks/Fees.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Metcalf
Date:	May 13, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute S655-CSRU-36		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 655 would amend the Locksmith Licensing Act by expanding the powers of the Board to authorize the employment of an attorney and the conducting of criminal history record checks on applicants, to allow for the regulation of apprentice locksmiths, and to authorize the SBI to conduct criminal record checks for the Board.***

CURRENT LAW: Effective January 1, 2003, no person can perform locksmith services (as defined in the law) without being licensed. In order to be licensed a person must be of good moral and ethical character, at least 18 years of age, and must have successfully completed a licensing exam administered by the Locksmith Licensing Board.

BILL ANALYSIS: Section 1 of the bill deletes the repairing, rebuilding, rekeying, repining, servicing, or adjusting of safes from the definition of locksmith services.

Section 2 expands the powers of the Locksmith Licensing Board to authorize the Board to employ an attorney and to request criminal history background checks from the Department of Justice.

Section 3 adds the lack of a disqualifying criminal history record check to the qualifications for licensure as a locksmith.

Section 4 adds a new section for the regulation of locksmith apprentices. A person who otherwise meets the qualification of a locksmith, except for passing the exam, may be given the locksmith apprentice designation for a period of up to 3 years. As an apprentice, a person may practice locksmithing under the supervision of a licensed locksmith. A licensed locksmith may supervise no more than 2 apprentices at a time.

Section 5 authorizes the Board to charge an apprentice fee of $100 and an apprentice transfer fee of $25.00. The transfer fee applies when the supervising locksmith is changed.

Section 6 adds employees of an automotive repair business when providing services in the normal course of the business to the list of person exempt from the locksmith licensing act when opening locks in the normal course of their duties provided they do not represent themselves as locksmiths.

Section 7 sets out the requirement that an applicant for a locksmith license or an apprentice locksmith designation not have been convicted of committing a disqualifying criminal act. These acts include acts of violence (murder, rape, kidnapping, assaults, arson), thefts, frauds, certain crimes against children, public intoxication and certain drug and alcohol offenses, committed in violation of the laws of any state or the federal government. The Board has the authority to review the history of the conviction and, based on the factors set forth, determine if the conviction shows a lack of good moral or ethical character. If so, the application can be denied.

Section 8 authorizes the Department of Justice, through the State Bureau of Investigation, to conduct State criminal history background checks on applicants for locksmiths or locksmith apprentices, and to request a similar check from the FBI. These criminal record checks are to be based on fingerprints. The SBI may collect a fee to cover the cost of the check.

EFFECTIVE DATE: The bill becomes effective July 1, 2003.

If reported favorable by Senate Commerce, the bill will be rereferred to Senate Finance.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 655
PROPOSED COMMITTEE SUBSTITUTE S655-CSRU-36 [v.1]

5/9/2003 5:55:01 PM

Short Title: Amend Locksmith Act/Criminal Checks/Fees. (Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING CHANGES TO THE DEFINITION OF LOCKSMITH SERVICES UNDER THE LOCKSMITH LICENSING ACT, TO AMEND THE POWERS OF THE NORTH CAROLINA LOCKSMITH LICENSING BOARD TO ALLOW THE BOARD TO EMPLOY AN ATTORNEY AND HAVE CONDUCTED CRIMINAL HISTORY RECORD CHECKS ON APPLICANTS, TO AMEND THE LOCKSMITH LICENSING ACT TO ALLOW THE BOARD TO REGULATE APPRENTICE LOCKSMITHS AND COLLECT FEES, TO CLARIFY THE EXEMPTION FOR TOWING SERVICES UNDER THE ACT, AND TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS OF APPLICANTS FOR LICENSURE OR APPRENTICE DESIGNATION AS A LOCKSMITH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74F-4(5) reads as rewritten:

"(5) Locksmith services. – Repairing, rebuilding, rekeying, repinning, servicing, adjusting, or installing locks, mechanical or electronic locking devices, access control devices, egress control devices, ~~safes,~~ vaults, and safe-deposit boxes for compensation or other consideration, including services performed by safe technicians."

SECTION 2. G.S. 74F-6 is amended by adding the following new subdivisions to read:

"The Board shall have the power and duty to:

...

(15) Employ an attorney to assist or represent the Board in enforcing this Chapter.

(16) Request that the Department of Justice conduct criminal history record checks of applicants for licensure and apprenticeships pursuant to G.S. 114-19.8A."

SECTION 3. G.S. 74F-7 reads as rewritten:

"**§ 74F-7. Qualifications for license.**

An applicant shall be licensed as a locksmith if the applicant meets all of the following qualifications:

(1) Is of good moral and ethical character.

(2) Is at least 18 years of age.

(3) Successfully completes an examination administered by the Board that measures the knowledge and skill of the applicant in locksmith services and the laws applicable to licensed locksmiths.

(4) Pays the required fee under G.S. 74F-9.

(5) Is not disqualified as a result of a criminal history record check in accordance with G.S. 74F-18."

SECTION 4. Chapter 74F of the General Statutes is amended by adding a new section to read:

"**§ 74F-7A. Apprentices.**

(a) An applicant may receive an apprentice designation if the applicant meets all of the following requirements:

(1) Is of good moral and ethical character.

(2) Is at least 18 years of age.

(3) Is not disqualified as a result of a criminal history record check in accordance with G.S. 74F-18.

(4) Pays the required fee under G.S. 74F-9.

(b) After an applicant has satisfied the requirements in subsection (a) of this section, the apprentice may practice as an apprentice locksmith under the supervision of a licensed locksmith. The Board shall issue each apprentice a colored badge card that identifies the individual as an apprentice and includes the apprentice designation. The Board shall establish requirements for apprentice supervision.

(c) An apprentice may have the apprentice designation for no greater than three years. On or before the three-year period expires, the apprentice shall take the locksmith licensure examination administered by the Board. If the apprentice fails to take the examination within the three-year period or fails the exam and does not retake the examination on or before the three-year period expires, the apprentice shall not receive licensure and shall not be granted another apprenticeship.

(d) If an apprentice terminates employment with a licensed locksmith under which the apprentice originally received his or her apprenticeship, the apprentice shall find employment with another licensed locksmith to maintain the apprentice designation and shall pay a transfer fee pursuant to G.S. 74F-9.

Each licensed locksmith shall have no more than two apprentices at one time. However, a licensed locksmith shall have a 90-day grace period within which to accommodate more than two apprentices if the apprentice is newly hired as a result of a previous termination of employment or the inability of a licensed locksmith to supervise the apprentice. The licensed locksmith shall contact the Board once the locksmith terminates the additional apprentice and the licensed locksmith shall be legally responsible for the apprentice's work until the Board is notified otherwise."

SECTION 5. G.S. 74F-9 reads as rewritten:

"**§ 74F-9. Fees.**

The Board shall establish fees not exceeding the following amounts:

(1)	Issuance of a license	$100.00
(2)	Renewal of a license	$100.00
(3)	Examination	$200.00
(4)	Reinstatement	$150.00
(5)	Late fees	~~$150.00.~~$150.00
(6)	Apprentice fee	$100.00
(7)	Apprentice transfer fee	$25.00."

SECTION 6. G.S. 74F-16(4) reads as rewritten:

"The provisions of this Chapter do not apply to:

...

(4) An employee of a towing ~~service,~~service or an automotive repair business providing services in the normal course of its business, a repossessor, a taxi cab service, a motor vehicle dealer as defined in G.S. 20-286(11), or a motor club as defined in G.S. 58-69-1 when opening automotive locks in the normal course of their duties, so long as the employee does not represent himself or herself as a locksmith.

..."

SECTION 7. Chapter 74F of the General Statutes is amended by adding a new section to read:

"**§ 74F-18. Criminal history record checks of applicants for licensure or apprentice designation.**

(a) Definitions. – The following definitions shall apply in this section:

(1) Applicant. – A person applying for licensure as a locksmith pursuant to G.S. 74F-7 or apprentice designation pursuant to G.S. 74F-7A.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice locksmithing. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27,

Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subsection, such crimes also include similar crimes under federal law or under the laws of other states.

(b) All applicants for licensure or apprentice designation shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure or apprentice designation to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

If, after reviewing these factors, the Board determines that the applicant's criminal history disqualifies the applicant for licensure, the Board may deny licensure or apprentice designation of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's

decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited Immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure or apprentice designation to an applicant based on information provided in the applicant's criminal history record check."

SECTION 8. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.12. Criminal record checks of applicants for licensure or apprentice designation.**

The Department of Justice may provide to the North Carolina Locksmith Licensing Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure as a locksmith or an apprentice under Chapter 74F of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 9. This act becomes effective July 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 655
PROPOSED COMMITTEE SUBSTITUTE S655-PCS35284-RU-36

Short Title: Amend Locksmith Act/Criminal Checks/Fees. (Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING CHANGES TO THE DEFINITION OF LOCKSMITH SERVICES UNDER THE LOCKSMITH LICENSING ACT, TO AMEND THE POWERS OF THE NORTH CAROLINA LOCKSMITH LICENSING BOARD TO ALLOW THE BOARD TO EMPLOY AN ATTORNEY AND HAVE CONDUCTED CRIMINAL HISTORY RECORD CHECKS ON APPLICANTS, TO AMEND THE LOCKSMITH LICENSING ACT TO ALLOW THE BOARD TO REGULATE APPRENTICE LOCKSMITHS AND COLLECT FEES, TO CLARIFY THE EXEMPTION FOR TOWING SERVICES UNDER THE ACT, AND TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO CONDUCT CRIMINAL HISTORY RECORD CHECKS OF APPLICANTS FOR LICENSURE OR APPRENTICE DESIGNATION AS A LOCKSMITH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 74F-4(5) reads as rewritten:

"(5) Locksmith services. – Repairing, rebuilding, rekeying, repinning, servicing, adjusting, or installing locks, mechanical or electronic locking devices, access control devices, egress control devices, ~~safes,~~ vaults, and safe-deposit boxes for compensation or other consideration~~,~~ including services performed by safe technicians."

SECTION 2. G.S. 74F-6 is amended by adding the following new subdivisions to read:

"The Board shall have the power and duty to:

...

(15) Employ an attorney to assist or represent the Board in enforcing this Chapter.

(16) Request that the Department of Justice conduct criminal history record checks of applicants for licensure and apprenticeships pursuant to G.S. 114-19.8A."

SECTION 3. G.S. 74F-7 reads as rewritten:

"**§ 74F-7. Qualifications for license.**

An applicant shall be licensed as a locksmith if the applicant meets all of the following qualifications:

(1) Is of good moral and ethical character.

(2) Is at least 18 years of age.

(3) Successfully completes an examination administered by the Board that measures the knowledge and skill of the applicant in locksmith services and the laws applicable to licensed locksmiths.

(4) Pays the required fee under G.S. 74F-9.

(5) Is not disqualified as a result of a criminal history record check in accordance with G.S. 74F-18."

SECTION 4. Chapter 74F of the General Statutes is amended by adding a new section to read:

"**§ 74F-7A. Apprentices.**

(a) An applicant may receive an apprentice designation if the applicant meets all of the following requirements:

(1) Is of good moral and ethical character.

(2) Is at least 18 years of age.

(3) Is not disqualified as a result of a criminal history record check in accordance with G.S. 74F-18.

(4) Pays the required fee under G.S. 74F-9.

(b) After an applicant has satisfied the requirements in subsection (a) of this section, the apprentice may practice as an apprentice locksmith under the supervision of a licensed locksmith. The Board shall issue each apprentice a colored badge card that identifies the individual as an apprentice and includes the apprentice designation. The Board shall establish requirements for apprentice supervision.

(c) An apprentice may have the apprentice designation for no greater than three years. On or before the three-year period expires, the apprentice shall take the locksmith licensure examination administered by the Board. If the apprentice fails to take the examination within the three-year period or fails the exam and does not retake the examination on or before the three-year period expires, the apprentice shall not receive licensure and shall not be granted another apprenticeship.

(d) If an apprentice terminates employment with a licensed locksmith under which the apprentice originally received his or her apprenticeship, the apprentice shall find employment with another licensed locksmith to maintain the apprentice designation and shall pay a transfer fee pursuant to G.S. 74F-9.

Each licensed locksmith shall have no more than two apprentices at one time. However, a licensed locksmith shall have a 90-day grace period within which to accommodate more than two apprentices if the apprentice is newly hired as a result of a previous termination of employment or the inability of a licensed locksmith to supervise the apprentice. The licensed locksmith shall contact the Board once the locksmith terminates the additional apprentice, and the licensed locksmith shall be legally responsible for the apprentice's work until the Board is notified otherwise."

SECTION 5. G.S. 74F-9 reads as rewritten:

"**§ 74F-9. Fees.**

The Board shall establish fees not exceeding the following amounts:

(1)	Issuance of a license	$100.00
(2)	Renewal of a license	$100.00
(3)	Examination	$200.00
(4)	Reinstatement	$150.00
(5)	Late fees	~~$150.00.~~ $150.00
(6)	Apprentice fee	$100.00
(7)	Apprentice transfer fee	$25.00."

SECTION 6. G.S. 74F-16(4) reads as rewritten:

"The provisions of this Chapter do not apply to:

...

(4) An employee of a towing ~~service,~~service or an automotive repair business providing services in the normal course of its business, a repossessor, a taxi cab service, a motor vehicle dealer as defined in G.S. 20-286(11), or a motor club as defined in G.S. 58-69-1 when opening automotive locks in the normal course of their duties, so long as the employee does not represent himself or herself as a locksmith.

...."

SECTION 7. Chapter 74F of the General Statutes is amended by adding a new section to read:

"**§ 74F-18. Criminal history record checks of applicants for licensure or apprentice designation.**

(a) Definitions. – The following definitions shall apply in this section:

(1) Applicant. – A person applying for licensure as a locksmith pursuant to G.S. 74F-7 or apprentice designation pursuant to G.S. 74F-7A.

(2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice locksmithing. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27,

Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subsection, such crimes also include similar crimes under federal law or under the laws of other states.

(b) All applicants for licensure or apprentice designation shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure or apprentice designation to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

(1) The level of seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
(7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

If, after reviewing these factors, the Board determines that the applicant's criminal history disqualifies the applicant for licensure, the Board may deny licensure or apprentice designation of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's

decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited Immunity. – The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure or apprentice designation to an applicant based on information provided in the applicant's criminal history record check."

SECTION 8. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.12. Criminal record checks of applicants for licensure or apprentice designation.**

The Department of Justice may provide to the North Carolina Locksmith Licensing Board from the State and National Repositories of Criminal Histories the criminal history of any applicant for licensure as a locksmith or an apprentice under Chapter 74F of the General Statutes. Along with the request, the Board shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Board shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 9. This act becomes effective July 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 999
Second Edition Engrossed 4/30/03

Short Title:	Toner/Inkjet Cartridges.	(Public)
Sponsors:	Representatives Hackney, Sauls (Primary Sponsors); Insko and Lewis.	
Referred to:	Judiciary I.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT MAKING VOID AND UNENFORCEABLE AS A MATTER OF PUBLIC POLICY ANY PROVISION IN ANY AGREEMENT OR CONTRACT THAT PROHIBITS THE REUSING, REMANUFACTURING, OR REFILLING OF A TONER OR INKJET CARTRIDGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-36. Certain contracts relating to toner or inkjet cartridges void and unenforceable as a matter of public policy.**

Any provision in any agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge is void and unenforceable as a matter of public policy if the procurement of that agreement or contract violates the provisions of Article 1 of Chapter 75 of the General Statutes."

SECTION 2. This act is effective October 1, 2003, and applies to agreements or contracts entered into on or after that date. This act does not apply to or affect any litigation pending before that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 999
Second Edition Engrossed 4/30/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H999-CSSU-21 [v.1]

5/10/2003 11:08:24 AM

Short Title: Toner/Inkjet Cartridges. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT MAKING VOID AND UNENFORCEABLE AS A MATTER OF PUBLIC POLICY ANY PROVISION IN ANY AGREEMENT OR CONTRACT THAT PROHIBITS THE REUSING, REMANUFACTURING, OR REFILLING OF A TONER OR INKJET CARTRIDGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-36. Certain contracts relating to toner or inkjet cartridges void and unenforceable as a matter of public policy.**

Any provision in any agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge is void and unenforceable as a matter of public policy."

SECTION 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 13, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
S Hawn McGlaughon	State Control Sanford
Clarinda (Rinnly) Stephens	State Controls Sanford
Darrell Stepp	DuraLine Imaging Cary, NC
Jim Stoker	Re Cycle Technologies Knightdale
Bob Hrabec	Toner Solutions Apex NC
Jeff Hall	Toner Solutions Apex NC
Brian Hrabec	Toner Solutions Apex NC
Dean Malcom	Laser Consultants, Inc. Greensboro NC
Leslie Bebout	NCCBI
Roger Bone	Bone + Assoc
Jean McKellar	Moore + Van Allen

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 13, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Meghann Smith	Virginia Forx
[illegible]	Moore & VanAllen
Edgar Mills	CONC
Michelle Fraier	NC Bar Ass'n
Wade Harrison	" "
[illegible]	
[illegible]	NC State Watch

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 13, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BK Overcash	Intern
James J Bourie	Image Technology, II 3600 HWY 15 Oxford, N.C.
Chris Bourie	" " "
[illegible]	Lexmark
J F Brown	Systel Rd NC
[illegible]	WCSR
[illegible]	WCSR
[illegible]	Payne & Associates
Bill Martin	[illegible]
Bill Hall	Jordan Price
Susan Valenti	Nationwide

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 13, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	H&W
	JPRSO
Edmisten + Webb	
Chad Essick	Edmisten & Webb
Laura DeVine	NCGA
John Mattox	GOV OFFICE
Alan B. Brown	Comm. Bus. MSCNIWSU
William Knight	Alltech
Kiki Danton	NCPIRG
LUCY ALLEN	
Joe McClees	McClees Consulting Firm

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 13, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
STEVE BRYANT	NORTH CAROLINA LOCKSMITH ASSOC.
Laura Busse	NC Locksmith Licensing Board
Richard S. Chandler	NC Locksmith Association
Anna Bridgers	NC Locksmith Association
Virginia Hebert	Sen. Berger
Eddie Caldwell	NC Burglar & Fire Alarm Assn
Teri Ann Harris	LA Harris & Associates
Barbara Cansler	Ind Cont.
Skip London	Static Control
VALERIA MUSAT	RCR IMAGING PRODUCTS
M. McLaughlin	N.C. Center for Public Policy Research

Commerce
Tuesday, May 20, 2003, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Bills

SJR 1021	Confirm Jo Anne Sanford Utilities Commission.	Senator Soles
HB 913	Universal Telephone Service Provider.	Representative Saunders Representative Brubaker
HB 283	Property and Casualty Insurance Omnibus.-AB	Representative Nye
HB 358	Increase Damage Limits for MV Accidents.	Representative Saunders Representative Starnes
HB 744	Managed Care Patient Assistance.	Representative Hackney

Presentations

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, May 20, 2003 at 11:00 a.m.
Room 1027, Legislative Building
MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, May 20, 2003, in Room 1027 of the Legislative Building. Sixteen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced the pages: Regina Ball of Bessemer City, sponsored by Senator David Hoyle; and Grayson Cave of Cary, sponsored by Senator Richard Stevens.

Senator Soles introduced Mr. Franklin Freeman to speak on behalf of the Governor on SJR 1021, Confirm Jo Anne Sanford Utilities Commission. Senator John Kerr and former Senator and current Utilities Commissioner Richard Conder spoke in favor of Ms. Jo Anne Sanford's confirmation. Senator Soles recognized other Utilities Commission members present in the audience: Michael Wilkins, Lorinzo Joyner, and Jimmy Irvin, who echoed the comments of the previous speakers. Senators Tony Rand and David Hoyle jointly moved a favorable report of the resolution. Commissioner Sanford was recognized to make some comments. Following her remarks, a vote was taken, and the motion carried.

Senator Soles introduced Representative Drew Saunders to explain HB 913, Universal Telephone Service Provider, a bill that was requested by the Utilities Commission. Senator Tony Moore moved a favorable report of the bill. The motion carried.

Senator Soles introduced Representative Edd Nye to speak on HB 283, Property and Casualty Insurance Omnibus-AB. Senator Purcell moved the adoption of a proposed committee substitute. The motion carried. Mr. Frank Folger and Mr. Dashiell Propes of the Department of Insurance explained the committee substitute. Senator Rand sent an amendment forward and moved its adoption. Mr. Bill Scoggin of Kennedy Covington Lobdell & Hickman law firm, representing Public Storage, Inc., told the committee there is no requirement that renters buy insurance as a condition of renting storage space. The Department has been working to determine a way to give oversight for the selling of this type of insurance. The motion carried. Senator William Purcell sent a second amendment forward and moved its adoption. The motion carried. Senator Purcell moved an unfavorable report of the bill, favorable as to the committee substitute as amended and engrossed into a new committee substitute. The motion carried.

Senator Soles introduced Representative Edgar Starnes to explain HB 358, Increase Damage Limits for MV Accidents. Senator Purcell sent forward an amendment and moved its adoption. The motion carried. Senator Virginia Foxx moved a favorable report of the bill as amended and that it be engrossed into a committee substitute. The motion carried.

Senator Soles took up HB 744 in the absence of its sponsor, Representative Joe Hackney. Ms. Christine Ryan, Department of Justice, Management Care Patient Assistance, explained the bill. Senator Rand moved a favorable report of the bill. The motion carried.

The meeting adjourned at 11:35 a.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, May 20, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.JR. **1021** Confirm Jo Anne Sanford Utilities Commission.
Sequential Referral: None
Recommended Referral: None

H.B. **744** Managed Care Patient Assistance.
Sequential Referral: None
Recommended Referral: None

H.B. **913** Universal Telephone Service Provider.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, May 20, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **358** Increase Damage Limits for MV Accidents.

Draft Number:	PCS 70323
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Wednesday, May 21, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **283** Property and Casualty Insurance Omnibus.-AB

Draft Number:	PCS50286
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE JOINT RESOLUTION 1021

Sponsors:	Senator Soles.
Referred to:	Commerce.

May 8, 2003

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE REAPPOINTMENT OF JO ANNE SANFORD TO THE UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10, appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, a vacancy will occur on the North Carolina Utilities Commission on June 30, 2003, by expiration of term; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the names of his appointee, Jo Anne Sanford, to serve a term on the North Carolina Utilities Commission, which will begin July 1, 2003, and expire June 30, 2011; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The appointment of Jo Anne Sanford to the North Carolina Utilities Commission for a term to begin July 1, 2003, and expire June 30, 2011, is confirmed.

SECTION 2. This resolution is effective upon ratification.

Referred to Commerce 4/29/03

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

MICHAEL F. EASLEY
GOVERNOR

April 25, 2003

Ms. Janet Pruitt
Principal Clerk of the Senate
NC General Assembly
2020 Legislative Building
Raleigh, NC 27601

Dear Ms. Pruitt:

Pursuant to General Statute §62-10, I hereby reappoint Ms. Jo Anne Sanford to serve as a member and chairperson of the North Carolina Utilities Commission and submit her name for confirmation by the North Carolina General Assembly. Her term shall begin July 1, 2003 and will expire June 30, 2011.

Ms. Sanford has served as a member of the Commission since 1995 and as chair since 1997.

Enclosed is biographical information on Ms. Sanford. Please feel free to call on her or members of my staff if you need additional information.

With kindest regards, I remain

Very truly yours,

Michael F. Easley

MFE:bc

Enclosure

c: The Honorable Beverly Perdue
The Honorable Marc Basnight
The Honorable James Black
The Honorable Richard Morgan
Ms. Denise Weeks

APR 28 2003

LOCATION: 116 WEST JONES STREET • RALEIGH, NC • TELEPHONE: (919) 733-5811

Jo Anne Sanford, Chair
North Carolina Utilities Commission
Biographical Information: March 2003

Prior to joining the Commission on July 19, 1995, Chairman Sanford worked 20 years with the North Carolina Attorney General's Office, serving in the Edmisten, Thornburg and Easley administrations of that office. As Special Deputy Attorney General, she led the Utilities and Insurance Section, representing the Department of Insurance, the State Health Plan, the Secretaries of State and Commerce, the Auditor and utilities ratepayers. Earlier assignments were in the areas of environmental, energy and Indian law. She chaired the 1994 Department of Justice Combined Campaign and Department of Justice Insurance committees.

Sanford, a Democrat, was born October 18, 1950, in Laurinburg and is a 1968 graduate of Randleman High School. She was an honors graduate of North Carolina State University in 1972 with a B.A. in Political Science and received a J.D. from the School of Law at the University of North Carolina in 1975. Governor James B. Hunt appointed her Chair of the Commission on February 1, 1997 to fill Judge Hugh Wells' unexpired term as chair, then re-appointed her to a four-year term beginning July 1, 1997. Governor Michael F. Easley appointed her to second full term as Chair in June, 2001. Her term as Commissioner expires June 30, 2003.

Professional affiliations include the North Carolina and Wake County Bar Associations, the 10th Judicial District Bar, the Susie Sharp Inns of Court and Women Executives in State Government. She is licensed to practice in all three federal districts in North Carolina and before the United States Supreme Court.

Sanford chaired a subcommittee of the National Association of Regulatory Utility Commissioners (NARUC) Communications Committee and is a member of the NARUC Board of Directors. She was one of three state appointees to the Federal Communications Commission's North American Numbering Council (NANC[1]), is the sole state commissioner member of the Board of Directors, Universal Service Administration Corporation (USAC[2]), and serves with the five FCC Commissioners on a Joint Conference established to promote the deployment of broadband services to all parts of the country (FCC's Section 706 Joint Conference[3]). She chairs the Board of Directors of the National Regulatory Research Institute (NRRI[4]) at the Ohio State University and is a regular speaker at a variety of public utilities conferences and seminars. As Commission Chair, Sanford is an *ex officio* member of the North Carolina Tax Review Board, the Energy Policy Council, the Agency for Public Telecommunications and the

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[1] The North American Numbering Council advises the FCC on technical and policy decisions concerning allocation of the telephone number supply for the North American continent.

[2] The Universal Service Administration Corporation administers the entire system for "support" for telephone service, found in the federal high cost fund, the low-income fund, the e-rate funds (used to wire schools and libraries across the nation), and the rural health care fund. These funds combine in a dollar figure in excess of $6.5 billion.

[3] The Joint Conference focuses on deployment of broadband to underserved areas. Working as a member of the conference and with industry and regulators, Sanford organized a national meeting in Greenville, N.C. in the spring of 2002, showcasing the telemedicine capabilities of the ECU School of Medicine.

[4] The NRRI is a singular research institute dedicated to high quality research and publication on matters in issue before state and federal regulators, dealing with regulated public utilities. It is located and affiliated with the Ohio State University.

Geographic Information Systems Board. In 2002 she attended the Kennedy School of Government's State and Local Executives program on an IBM scholarship, as well as an advanced telecommunications conference at the Aspen Institute (along with FCC Commissioners and senior executives in the telecommunications industry). In March, 2003 Sanford was designated one of 5 state commissioners to participate in a national task force, charged to help implement a major, complex and vital telecommunications edict to be issued by the FCC.

Chairman Sanford chaired the 2002 Trinity United Methodist Church Board of Trustees during a major renovation project at the downtown church. She and her husband teach Sunday School and are active, with their daughter, in various church committees. She is a member of the Society for the Preservation of Historic Oakwood, Capital Area Preservation and North Carolina State University's Graduate School Board of Advisors. She is a recipient of the Wake County YWCA 1998 Academy of Women designation and the 1999 Distinguished Women of North Carolina award for government service.

Sanford and her husband, Billy Brewer, Jr., live with their daughter Charlotte in Oakwood, a historic district in downtown Raleigh.

FILED - SENATE
S1021 MAY 07 2003
PRINCIPAL CLERK

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE JOINT RESOLUTION DRSJR75245-LB-230 (5/7)

Sponsors: Senator Soles.

Referred to:

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE REAPPOINTMENT OF JO ANNE SANFORD TO THE UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10, appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, a vacancy will occur on the North Carolina Utilities Commission on June 30, 2003, by expiration of term; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the names of his appointee, Jo Anne Sanford, to serve a term on the North Carolina Utilities Commission, which will begin July 1, 2003, and expire June 30, 2011; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

SECTION 1. The appointment of Jo Anne Sanford to the North Carolina Utilities Commission for a term to begin July 1, 2003, and expire June 30, 2011, is confirmed.

SECTION 2. This resolution is effective upon ratification.

SENATE JOINT RESOLUTION 1021: Confirmation of Appointment of Jo Anne Sanford to the North Carolina Utilities Commission

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Soles
Date:	May 20, 2004	**Summary by:**	Kory J. Goldsmith
Version:	1st Edition		Committee Counsel

SUMMARY: ***Ms. Jo Anne Sanford has been appointed by the Governor to fill the vacancy on the Utilities Commission created by the expiration of her current term as of June 30, 2003. Ms. Sanford's new term will commence July 1, 2003 and expire June 30, 2011. SJR 1021 confirms this appointment as required by G.S. 62-10. The resolution is effective upon ratification.***

Ms. Sanford's resume and the Statement of Economic Interest she submitted to the North Carolina Board of Ethics are before this Committee.

BACKGROUND: The North Carolina Utilities Commission consists of seven commissioners who are appointed for eight-year terms. Commissioners are appointed by the Governor and must be confirmed by the General Assembly by Joint Resolution.

A Utilities Commissioner is presently paid a salary of $104,523 annually (the same as a Superior Court Judge). There are fixed salary increases based upon length of service on the Utilities Commission, 4.8% after five years of service and 9.6% after ten years. Ms. Sanford currently receives $465.62 per month due to length of service, and an additional $11,882 annually as the Chair of the Commission.

Members of the Utilities Commission are subject to the same standards of conduct as a judge. They may be removed during their term of office only for cause, by impeachment. During service on the Commission, a Commissioner may not engage in any other employment, business, profession or vocation. During the term of office the Commissioner may not be associated in any way with any public utility company, including ownership of any interest.

The General Assembly created the Utilities Commission and establishes policies that the Commission carries out, usually with broad discretion. The Commission is both a regulator of public utilities, as well as a judge in all contested matters relating to public utilities. Decisions of the Utilities Commission are appealable directly to the North Carolina Court of Appeals, with the exception of general rate cases, which are appealable directly to the North Carolina Supreme Court.

The North Carolina Utilities Commission regulates the rates and services of the intrastate operations of public utilities supplying electricity, gas, certain telecommunications services, water and sewer services, taxis, and certain aspects of bus, train, trucking, express package and mail services. The extent of this regulation varies among the different types of utilities, and there are limitations imposed by federal law.

The Commission hears and decides proceedings relating to the issuance of utility franchises, the construction of electric generating plants, the setting of utility rates, the adjustment of electric utility rates based upon fuel cost changes, the adjustment of natural gas rates based upon changes in the cost of natural gas, use of natural gas expansion funds, the provision of new utility services, and the adjudication of complaints concerning the services of public utilities. Again, the extent of the Commission's jurisdiction depends upon the type of utility service and is affected in some cases by federal law. The Commission also has limited authority over subsidiaries of electric cooperatives.

SJR1021-SMRC-001
Steve Rose contributed substantially to this summary

JO ANNE SANFORD

430 North Salisbury St. • 4325 Mail Service Ctr. • Raleigh, NC 27699 • 919-733-6067 • Sanford@ncuc.net

UTILITIES BACKGROUND

Chair, North Carolina Utilities Commission
- Re-appointed to four-year term beginning July 2001 by Governor Michael F. Easley
- Appointed to four-year term beginning July 1997 by Governor James B. Hunt
- Appointed to unexpired term beginning February 1997 by Governor James B. Hunt

Commissioner, North Carolina Utilities Commission
- Appointed to eight-year term beginning July 1995 by Governor James B. Hunt

RELATED APPOINTMENTS AND POSITIONS

- Board of Directors, National Association of Regulatory Utilities Commissioners
  - Chair, Subcommittee of Telecommunications Committee
  - Subcommittee on Administration
  - 2003 Triennial Review Implementation Process Task Force
- FCC North American Numbering Council (one of three original state appointees)
- FCC Joint Conference to promote universal deployment of broadband services
- Board of Directors, Universal Service Administration Corporation (sole state commissioner member)
- Chair, Board of Directors, National Regulatory Research Institute (at the Ohio State University)

Ex Officio Positions

- North Carolina Tax Review Board
- Agency for Public Telecommunications
- Energy Policy Council
- Geographic Information Systems Board

PRIOR EXPERIENCE

North Carolina Attorney General's Office (1975-1995)
- Special Deputy Attorney General
  - Managed Utilities and Insurance Section
  - Represented Department of Insurance, State Health Plan, Secretary of State, Secretary of Commerce, Office of the State Auditor and NC utilities ratepayers
- Chair, Department of Justice Insurance Committee
- Represented State's interest in environmental, energy and Indian law matters

EDUCATION

North Carolina State University, Bachelor of Arts in Political Science (1972)

University of North Carolina School of Law, Juris Doctor (1975)

Kennedy School of Government, 2002 State and Local Executives Program (IBM scholarship)

Aspen Institute, Advanced Communications Conference (2002)

Professional Affiliations and Certifications

- Licensed to Practice Law – NC
- Admitted before US Supreme Court
- Women Executives in State Government
- Admitted to practice in US District Courts of NC
- Tenth Judicial District Bar
- Susie Sharp Inns of Court
- North Carolina and Wake County Bar Associations

Awards and Recognition

- 2003 Outstanding Government and Public Sector Attorney (North Carolina Bar Association)
- 1999 Distinguished Woman of North Carolina (awarded for government service)
- 1998 Wake County YWCA Academy of Women Designation Award

Community Involvement

- Trinity United Methodist Church
- Society for the Preservation of Historic Oakwood
- North Carolina State University, Graduate School Board of Advisors

Personal Highlights

- Born in Laurinburg, NC 1950
- Attended and graduated from Randolph County Public Schools, Randleman, NC
- Married to Billy Brewer, Jr. (Lenoir County native)
- Mother of Charlotte, an Enloe High School senior, bound for Appalachian State University
- Resides with family in Oakwood, historic district in downtown Raleigh, NC

NO-CHANGE FORM ("Short Form")

to

Statement of Economic Interest

Executive Order Number One

Office Use Only
Code _____
Appt by _____
Date filed: 3/26/03

NORTH CAROLINA BOARD OF ETHICS
For assistance call 919-733-2780 Fax 919-733-2785
e-mail nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Mail to: Board of Ethics, 1324 Mail Service Center, Raleigh, NC 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

Executive Order Number One requires that Public Officials update their Statement of Economic Interest *each year* by **May 15**. See Sections 9 (b) & (e). New information must be reported and information no longer applicable must be deleted.

IF YOU DO **NOT** HAVE ANY CHANGES TO REPORT, please sign, date, and have this "No-Change" form notarized by a notary public. Upon completion, please return this signed, dated, and notarized page ONLY to the above address. If you do not have any material changes to report, this is the only form you need to submit.

IF YOU **DO** HAVE CHANGES TO REPORT, please make all necessary changes on a supplemental Statement of Economic Interest form. Other than your name and the name of your Board or Agency, YOU NEED ONLY ANSWER QUESTIONS WHERE YOU HAVE CHANGES TO REPORT.

Please sign, date, and have whichever form you use notarized before returning it to the Board of Ethics at the above address. AGAIN, ALL FORMS MUST BE NOTARIZED.

Name of Person Filing: Jo Anne Sanford

Name of Board on which you are serving: _____

or

Name of State Agency in which you are employed: N C Utilities Commission / Commerce

VERIFICATION OF *NO MATERIAL CHANGES*

I hereby certify that I have read Executive Order Number One and this form, and to the best of my information, knowledge and belief, there have been **no material changes** to my personal, familial, or financial situation which would require disclosure pursuant to Executive Order Number One (January 12, 2001), and I have no additional material information to disclose that was not disclosed in my previously filed Statement of Economic Interest. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

1-8-03
Date

Jo Anne Sanford
Signature of Person Filing

SHILDA BRANSON NOTARY PUBLIC WAKE COUNTY, N.C.

STATE OF NORTH CAROLINA
COUNTY OF Wake

Subscribed and sworn before me this the 8th day of January, 2003.

My Commission Expires: 7-31-06

Shilda Branson
Notary Public

Supplemental
Statement of Economic Interest
Executive Order Number One

NORTH CAROLINA BOARD OF ETHICS
For assistance call 919-733-2780 Fax 919-733-2785
e-mail nc.boardofethics@ncmail.net www.doa.state.nc.us/doa/ethics

Mail to: Board of Ethics, 1324 Mail Service Center, Raleigh, NC 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

Executive Order Number One requires that Public Officials update their Statement of Economic Interest each year **between April 15 and May 15.** See Sections 9 (b) & (e). New information must be reported and information no longer applicable must be deleted.

IF YOU DO NOT HAVE ANY CHANGES TO REPORT, please sign, date, and have this page notarized by a notary public. Upon completion, please return this signed, dated, and notarized page ONLY to the above address.

IF YOU DO HAVE CHANGES TO REPORT, please make all necessary changes on the enclosed Statement of Economic Interest form. YOU NEED ONLY ANSWER QUESTIONS WHERE YOU HAVE CHANGES TO REPORT. Please sign, date, and have the form notarized before returning it to the Board of Ethics at the above address.

Name of Person Filing: JoAnne Sanford

Name of Board on which you are serving: NC Utilities Commission
or
Name of State Agency in which you are employed: _____

VERIFICATION OF NO MATERIAL CHANGES

I hereby certify that I have read Executive Order Number One and this form, and to the best of my information, knowledge and belief, there have been no material changes to my personal, familial, or financial situation which would require disclosure pursuant to Executive Order Number One (January 12, 2001), and I have no additional material information to disclose that was not disclosed in my previously filed Statement of Economic Interest. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

1-23-02
Date

JoAnne Sanford
Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Subscribed and sworn before me this the 23rd day of January, 2002.

My Commission Expires: May 28, 2006
My Commission Expires 5-28-2006

Debra C. Fearing
Notary Public

DEBRA C. FEARING NOTARY PUBLIC WAKE COUNTY, N.C.

NORTH CAROLINA BOARD OF ETHICS
1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324

GEORGE F. BASON
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

July 18, 2001

The Honorable Michael F. Easley
Governor of North Carolina
20301 Mail Service Center
Raleigh, North Carolina 27699-20301

Re: Evaluation of Statement of Economic Interest filed by
Jo Anne Sanford, Chair, Utilities Commission

Dear Governor Easley:

In accordance with Section 5(b) of Executive Order Number One ("the Order"), we have completed our evaluation of the statement of economic interest mentioned above.

We did not find an actual conflict of interest or the potential for conflict of interest.

Section 7 of the Order mandates that public officials perform their duties in a manner to promote the best interests of the public. Because conflicts of interest may arise while performing their public duties, public officials should make a due and diligent effort to determine whether they have a conflict of interest before taking any action that could have an impact on their own financial, familial, or personal interests.

We are sending a copy of this letter to the Chairman of the Commission with the request that our findings be read into the Commission's minutes.

Sincerely,

George F. Bason/md

George F. Bason
Chairman

cc: Ms. Jo Anne Sanford
Chairman of the Commission

PHONE: 919-733-2780 FAX: 919-733-2785 E-MAIL PERRY.NEWSON@NCMAIL.NET

217
GAW
5-25-01

Statement of Economic Interest

for Executive Order Number One
Governor Michael F. Easley

NORTH CAROLINA BOARD OF ETHICS
1324 Mail Service Center
Raleigh, NC 27699-1324
(919) 733-2780 FAX (919) 733-2785

Mail form to: Board of Ethics, 1324 Mail Service Center, Raleigh, N.C. 27699-1324
If you can use State Government Courier, use Courier 51-01-00
Office location: Administration Building, 116 West Jones Street, Room 2009G, Raleigh

For assistance call Millie Donavant or Christine Miller at (919) 733-2780
e-mail: millie.donavant@ncmail.net **or** christine.a.miller@ncmail.net

Name of Person Filing: Jo Anne Sanford

Name of Spouse: W. E. Brewer, Jr.

Home Address: 318 N. Boundary St
Raleigh NC 27604

Home Telephone: 919-821-2453

Name of Employer: North Carolina Utilities Commission

Your Title: Chair

Business Address: 4325 Mail Service Center
Raleigh, NC 27699

Business Telephone: 919-733-6067

Business Fax: 919-733-7300

Business Activity: Chair of N.C.U.C., w/ all responsibilities attendant for oversight of agency + regulation of public utilities in N.C.

Spouse's Employer and Business Activity: self- Brewer Law Firm, P.A.
Bankruptcy atty.

If you are filing because you are serving on or being considered for appointment to a State Board (as defined above), state the **name of the Board.**

NC Utilities Commission

Are you, your employer, your spouse, or spouse's employer licensed or regulated by the Board on which you are/will be serving, or have business relationships with the Board? (No) If yes, please explain:

NOTE: Executive Order Number One requires you to list assets and liabilities with a value of $10,000 or more for yourself and spouse, as set forth below. You are not required to include an estimated value of the assets and liabilities.

1. List all parcels of **real estate** located in North Carolina in which you, or your spouse, have an ownership interest valued $10,000 or more. Give street address or other description adequate to determine the location of each parcel. State the specific interest held in each identified parcel.

318 N. Boundary St - fee simple
533 N. Bloodworth St. " Pinewood Forest Rest Home
522-29 No. " " " Pink Hill, N.C.
317 Pell St " "
619 No. Person St " "

Identify real estate that is currently leased or rented to a State Government Agency, and identify the Agency. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest.

None

If any parcels are located in an area over which the Board you are serving on has regulatory authority or could otherwise be affected by Board decisions, please explain.

None

2. Identify **personal property** sold to or bought from the State within the preceding two years and personal property currently leased or rented to the State by you or your spouse. Indicate whether the transactions are in accordance with the provisions of the Division of Purchase and Contract. If not, please explain.

None

3. List the name of each **publicly-owned company** in which the value of securities held by you or your spouse is $10,000 or more. You may attach a list from your broker.

None

4. List the name and business activity of each **non-publicly-owned company or business entity** in which the value of securities or other equity interests held by you or your spouse is $10,000 or more, including but not limited to, interests held in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations.

(Spouse) Pinewood Associates – rest home
Bird Hill, NC

With respect to the entities listed above, should any of the entities own securities or equity interests of $10,000 or more in other companies or business entities, list the name of the company or business entity and a brief description of the business activity of each.

N/A

Are you, your spouse, or any of the entities listed above licensed by, regulated by, or have business relationships with the same area of State Government with which you are associated? If so, please explain.

-No for N/A

5. You are required to make a good faith effort to list any individual or business entity with which you or your spouse have a financial or professional relationship provided:

(1) The nature of the relationship presents a conflict of interest or the appearance of a conflict of interest for you while performing your official duties, or

(2) Any separate financial or professional interest of such individual or business entity would present a conflict of interest or appearance of a conflict of interest for you while performing your official duties. For each individual or business entity listed, generally describe the financial or professional relationship and provide a brief explanation of why the individual or business entity has been listed.

N/A

6. List all **directorships** on all boards on which you are serving. Please explain any situation that could appear to be a conflict of interest with your official duties.

Trinity Un. Methodist Church Bd of Trustees
NREI Board of Directors
NAREC Board of Directors

No Conflict

7. Are you an **elected official** at the local government level? If so, please explain.

NO

8. If you, your spouse, or your dependent children are the **beneficiary of a trust** created, established or controlled by you, list the name and address of the trustee and a description of the trust. To the extent such information is available to you, include a list of businesses in which the trust has an ownership interest of $10,000 or more.

NO

9. List each **asset** with a valuation of $10,000 or more, held by you or your spouse, which have not been listed elsewhere. Some examples are mutual funds, certificates of deposit, bank accounts and retirement accounts. It is not necessary to list furniture, jewelry, automobiles, and other personal effects.

- State govt. Deferred Comp plan
- State govt Retirement

10. List each **liability** with a valuation of $10,000 or more for you and your spouse. Give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, and automobile loans.

527-29 No Bedworth St - St Employees Credit Union
619 No Person St - Centura Bank
317 Pell St - Thelma Sanford + Doris King
} mtg. loans
Pinewood Associates - BB&T

11. List each **source of income** for you and your spouse where $10,000 or more was received. For each source listed, describe the type of income received, and state the name of the business entity or individual from which the income was received. Some examples of income are salary or wages, professional fees, honoraria, interest, stock dividends, capital gains, and business profits.

Sources for Person Filing:

St. Govt - wages

Sources for Spouse:

Law firm - wages
Pinewood Associates - business income

Please explain if any of the sources of income are regulated by, receive permits from, or otherwise are connected with the same area of State Government with which you are connected.

NO

12. If you are a **practicing attorney**, check each category of legal representation in which you and/or the law firm with which you are associated has, during any single year of the past five years, earned legal fees of $10,000 or more from any of the following categories of legal representation:

N/A

( ) Admiralty ( ) Taxation ( ) Decedent's estates ( ) Corporation law ( ) Real property

( ) Negligence (representing plaintiffs) ( ) Negligence (representing defendants)

( ) Criminal law ( ) Labor law ( ) Insurance law ( ) Administrative law

( ) Utilities regulation or representation of regulated utilities ( ) Representation of local governments

13. If the information has not been included in previous questions, list all **non-publicly owned businesses** you have been associated with during the past five years as an employee, officer, director, partner, or owner. For each business listed, state your association, and the time period of your association. To the best of your knowledge, state whether any of the businesses listed does business with the same area of State Government with which you are associated. State the nature of business, and whether you or the business is licensed by, regulated by, receive permits, grants or other funding from the same area of State Government with which you are associated.

N/A

14. List all **gifts** received with a value exceeding **$200** during the twelve months preceding the date of this statement from sources other than your spouse or relatives.

None

List all **gifts** received with a value exceeding **$100** during the twelve months preceding the date of this statement from any source having business with or regulated by the State.

None

15. List all **bankruptcies** filed during the preceding five years by you, your spouse, or any entity in which you or your spouse has been associated financially. Provide a brief summary of the facts and circumstances regarding each listed bankruptcy.

None

16. Having read Executive Order Number One, state any problems or conflicts of interest you may have that are not fully covered in previous questions. Include an explanation of how you would propose to resolve the matter.

None

VERIFICATION

I hereby do certify that I have read this Statement of Economic Interest, and all attachments and to the best of my knowledge and belief it is true, correct and complete. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein. I acknowledge that I am under a continuing obligation to avoid conflicts of interest and the appearance of conflicts of interest. If I believe a potential for conflict exists, I will inquire of the Board of Ethics as to that potential conflict.

5-18-01
Date

J Anne Sanford
Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

SHILDA WINSTEAD NOTARY PUBLIC WAKE COUNTY, N.C.

Subscribed and sworn to before me this the 18th day of May, 2001.

My Commission Expires:
7-31-2001

Shilda Winstead
Notary Public

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 913

Short Title:	Universal Telephone Service Provider.	(Public)
Sponsors:	Representatives Brubaker and Saunders (Primary Sponsors).	
Referred to:	Public Utilities.	

April 8, 2003

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE NORTH CAROLINA UTILITIES COMMISSION TO DETERMINE A TIME IN WHICH FINAL RULES CONCERNING THE DESIGNATION OF A UNIVERSAL SERVICE PROVIDER FOR TELEPHONE SERVICE SHALL BE ADOPTED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-110(f1) reads as rewritten:

"(f1) Except as provided in subsection (f2) of this section, the Commission is authorized, following notice and an opportunity for interested parties to be heard, to issue a certificate to any person applying to provide local exchange or exchange access services as a public utility as defined in G.S. 62-3(23)a.6., without regard to whether local telephone service is already being provided in the territory for which the certificate is sought, provided that the person seeking to provide the service makes a satisfactory showing to the Commission that (i) the person is fit, capable, and financially able to render such service; (ii) the service to be provided will reasonably meet the service standards that the Commission may adopt; (iii) the provision of the service will not adversely impact the availability of reasonably affordable local exchange service; (iv) the person, to the extent it may be required to do so by the Commission, will participate in the support of universally available telephone service at affordable rates; and (v) the provision of the service does not otherwise adversely impact the public interest. In its application for certification, the person seeking to provide the service shall set forth with particularity the proposed geographic territory to be served and the types of local exchange and exchange access services to be provided. Except as provided in G.S. 62-133.5(f), any person receiving a certificate under this section shall, until otherwise determined by the Commission, file and maintain with the Commission a complete list of the local exchange and exchange access services to be provided and the prices charged for those services, and shall be subject to such reporting requirements as the Commission may require.

Any certificate issued by the Commission pursuant to this subsection shall not permit the provision of local exchange or exchange access service until July 1, 1996, unless the Commission shall have approved a price regulation plan pursuant to G.S. 62-133.5(a) for a local exchange company with an effective date prior to July 1, 1996. In the event a price regulation plan becomes effective prior to July 1, 1996, the Commission is authorized to permit the provision of local exchange or exchange access service by a competing local provider in the franchised area of such local exchange company.

The Commission is authorized to adopt rules it finds necessary (i) to provide for the reasonable interconnection of facilities between all providers of telecommunications services; (ii) to determine when necessary the rates for such interconnection; (iii) to provide for the reasonable unbundling of essential facilities where technically and economically feasible; (iv) to provide for the transfer of telephone numbers between providers in a manner that is technically and economically reasonable; (v) to provide for the continued development and encouragement of universally available telephone service at reasonably affordable rates; and (vi) to carry out the provisions of this subsection in a manner consistent with the public interest, which will include a consideration of whether and to what extent resale should be permitted. In adopting rules to establish an appropriate definition of universal service, the Commission shall consider evolving trends in telecommunications services and the need for consumers to have access to high-speed communications networks, the Internet, and other services to the extent that those services provide social benefits to the public at a reasonable cost.

Local exchange companies and competing local providers shall negotiate the rates for local interconnection. In the event that the parties are unable to agree within 90 days of a bona fide request for interconnection on appropriate rates for interconnection, either party may petition the Commission for determination of the appropriate rates for interconnection. The Commission shall determine the appropriate rates for interconnection within 180 days from the filing of the petition.

Each local exchange company shall be the universal service provider in the area in which it is certificated to operate on July 1, 1995, until otherwise determined by the Commission. In continuing this State's commitment to universal service, the Commission shall, by December 31, 1996, adopt interim rules that designate the person that should be the universal service provider and to determine whether universal service should be funded through interconnection rates or through some other funding mechanism. ~~By July 1, 2003,~~At a time determined by the Commission to be in the public interest, the Commission shall ~~complete~~ conduct an investigation ~~and adopt~~for the purpose of adopting final rules concerning the provision of universal services, the person that should be the universal service provider, and whether universal service should be funded through interconnection rates or through some other funding mechanism.

The Commission shall make the determination required pursuant to this subsection in a manner that furthers this State's policy favoring universally available telephone service at reasonable rates."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 913:
Universal Telephone Service Provider

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	Reps. Brubaker and Saunders
Date:	May 20, 2003	**Summary by:**	Steven Rose
Version:	1st Edition		Committee Counsel

SUMMARY: HB 913 would allow the Utilities Commission to determine when it is in the public interest to adopt final rules concerning the provision of universal service, the person that should be the universal service provider, and the appropriate funding mechanism. The act is effective when it becomes law.

CURRENT LAW: G.S. 62-110(f1) requires the Commission adopt the above referenced rules by July 1, 2003.

BACKGROUND: The General Assembly enacted legislation authorizing competition in local telephone service in 1996. That legislation required the Utilities Commission to adopt rules concerning the provision and funding of universal telephone service because a new mechanism would be needed as monopoly local service was replaced by competitive service. With monopoly service there is only one local provider. With competition there could be more than one. The original date for the adoption of final rules was July 1, 1998. This has twice previously been extended. The reason for the delay is that it has taken much longer than anyone expected for all the proceedings before the Commission regarding local competition to be completed. The Commission believes that final rules for universal service should be decided after the other proceedings are completed. Temporary rules are in place and universal service has been provided, and continues to be provided.

The policy of universal service in public utility service has existed for approximately 100 years. It is embraced by both the state and the federal governments. It means that affordable, basic service should be available to everyone.

Kory J. Goldsmith, Co-counsel to the House Committee on Public Utilities, contributed to this summary.

H913-SMRL-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H **2**

HOUSE BILL 283
Committee Substitute Favorable 4/17/03

Short Title: Property and Casualty Insurance Omnibus.-AB (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE REAL PROPERTY WARRANTY COMPANIES TO CARRY CONTRACTUAL LIABILITY POLICIES; REQUIRE MOTOR VEHICLE AND HOME APPLIANCE SERVICE AGREEMENT COMPANIES TO USE A SPECIFIC FORMAT ON ALL WRITTEN MATERIALS SUBMITTED; MANDATE ALL REQUIRED SUBMISSIONS TO THE DEPARTMENT OF INSURANCE TO BE IN A SPECIFIC FORMAT IF IN WRITING; REQUIRE WARRANTY COMPANIES TO COMPLY WITH ARTICLE 1 OF CHAPTER 58 OF THE GENERAL STATUTES; DEFINE MECHANICAL BREAKDOWN SERVICE AGREEMENTS AND REQUIRE ALL MECHANICAL BREAKDOWN SERVICE AGREEMENT COMPANIES TO COMPLY WITH ARTICLE 1 OF CHAPTER 58 OF THE GENERAL STATUTES AND WITH THE RULES REGARDING MOTOR VEHICLE AND HOME APPLIANCE SERVICE AGREEMENT COMPANIES; AND PROVIDE THAT A BAD CHECK CONSTITUTES NONPAYMENT OF PREMIUM OF A MOTOR VEHICLE LIABILITY INSURANCE POLICY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-1-20 is amended by adding a new subsection to read:

"(c) Real property warranty companies shall comply with the requirements of G.S. 58-1-36."

SECTION 2. G.S. 58-1-36 is amended by adding a new subsection to read:

"(e) Warranty companies, as defined in G.S. 58-1-15, 58-1-20, 58-1-25, and 58-1-30, shall comply with this section. The Commissioner may enforce compliance with this section using the provisions of Article 2 of this Chapter."

SECTION 3. G.S. 58-1-35 is amended by adding a new subsection to read:

"(m) If not submitted electronically, all contracts, literature, advertising materials, letters, and other documents submitted to the Department to comply with the filing requirements of this Chapter or an administrative rule adopted pursuant to this Chapter

shall be submitted on paper eight and one-half inches by eleven inches. Brochures and pamphlets shall not be stapled or bound."

SECTION 4. G.S. 58-3-150 is amended by adding a new subsection to read:

"(c) If not submitted electronically, all contracts, literature, advertising materials, letters, and other documents submitted to the Department to comply with the filing requirements of this Chapter or an administrative rule adopted pursuant to this Chapter shall be submitted on paper eight and one-half inches by eleven inches. Brochures and pamphlets shall not be stapled or bound."

SECTION 5. Article 1 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-1-40. Mechanical breakdown service agreements.**

(a) Except as provided in subsection (c) of this section, all mechanical breakdown service agreement companies soliciting business in this State shall comply with G.S. 58-1-35 and G.S. 58-1-36.

(b) As used in this section, "mechanical breakdown service agreement companies" include any person that issues mechanical breakdown service agreements and is not a licensed insurer, and "mechanical breakdown service agreements" are applicable to mechanized equipment, including automobiles, riding mowers, scooters, generators, farm implements, logging equipment, road graders, bulldozers, and power equipment not licensed for road use, whether mobile or not.

(c) This section does not apply to performance guarantees, warranties, mechanical breakdown service agreements, or motor vehicle service agreements made by:

(1) A manufacturer.

(2) A distributor.

(3) A subsidiary of a manufacturer or distributor."

SECTION 6. G.S. 58-37-50 reads as rewritten:

"**§ 58-37-50. Termination of insurance.**

No member may terminate insurance to the extent that cession of a particular type of coverage and limits is available under the provisions of this Article except for the following reasons:

(1) Nonpayment of premium when due to the insurer or producing agent. A check tendered in payment of premium that is dishonored by the bank because the account on which the check is drawn contains insufficient funds or is a closed or nonexistent account constitutes nonpayment of premium.

(2) The named insured has become a nonresident of this State and would not otherwise be entitled to insurance on submission of new application under this Article.

(3) A member company has terminated an agency contract for reasons other than the quality of the agent's insureds or the agent has terminated the contract and such agent represented the company in taking the original application for insurance.

(4) When the insurance contract has been cancelled pursuant to a power of attorney given a company licensed pursuant to the provisions of G.S. 58-35-5.

(5) The named insured, at the time of renewal, fails to meet the requirements contained in the corporate charter, articles of incorporation, and/or bylaws of the insurer, when the insurer is a company organized for the sole purpose of providing members of an organization with insurance policies in North Carolina."

SECTION 7. Sections 1 through 5 of this act become effective October 1, 2003. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H **D**

HOUSE BILL 283

Committee Substitute Favorable 4/17/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H283-CSRC-58 [v.1]

5/19/2003 6:04:44 PM

Short Title: Property and Casualty Insurance Omnibus.-AB (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE REAL PROPERTY WARRANTY COMPANIES TO CARRY CONTRACTUAL LIABILITY POLICIES; ESTABLISH GREATER UNIFORMITY AND FLEXIBILITY FOR REQUIREMENTS IMPOSED UPON SERVICE AGREEMENT COMPANIES AND PERSONS THAT ISSUE WARRANTIES UNDER ARTICLE 1 OF CHAPTER 58; EXPAND THE DEFINITION OF HOME APPLIANCE WITHIN THE HOME APPLIANCE SERVICE AGREEMENT COMPANIES STATUTE; ENHANCE ENFORCEMENT OF ARTICLE 1 OF CHAPTER 58; REQUIRE MOTOR VEHICLE AND HOME APPLIANCE SERVICE AGREEMENT COMPANIES TO USE A SPECIFIC FORMAT ON ALL WRITTEN MATERIALS SUBMITTED; MANDATE ALL REQUIRED INSURER SUBMISSIONS TO THE DEPARTMENT OF INSURANCE TO BE IN A SPECIFIC FORMAT IF IN WRITING; DEFINE MECHANICAL BREAKDOWN SERVICE AGREEMENTS AND REQUIRE ALL MECHANICAL BREAKDOWN SERVICE AGREEMENT COMPANIES TO COMPLY WITH ARTICLE 1 OF CHAPTER 58 OF THE GENERAL STATUTES AND WITH THE RULES REGARDING MOTOR VEHICLE AND HOME APPLIANCE SERVICE AGREEMENT COMPANIES; PROVIDE THAT A BAD CHECK CONSTITUTES GROUNDS FOR TERMINATION OF A MOTOR VEHICLE LIABILITY INSURANCE POLICY; AND AUTHORIZE THE ISSUANCE OF LIMITED LICENSES FOR THE SALE OF INSURANCE COVERAGE ON PERSONAL PROPERTY STORED IN SELF-SERVICE STORAGE UNITS.

The General Assembly of North Carolina enacts:

SECTION 1(a). G.S. 58-1-20 is amended by adding a new subsection to read:

"(c) Persons issuing real property warranties shall comply with the requirements of G.S. 58-1-36."

SECTION 1(b). G.S. 58-1-30 reads as rewritten:

"§ 58-1-30. Home appliance service agreement companies.

(a) This section applies to all home appliance service agreement companies soliciting business in this State, but it does not apply to performance guarantees or warranties made by manufacturers in connection with the sale of new home appliances. This section does not apply to any home appliance dealer licensed to do business in this State (i) whose primary business is the retail sale and service of home appliances; (ii) who makes and administers its own service agreements without association with any other entity; and (iii) whose service agreements cover only appliances sold by the dealer to its retail customers, provided that the dealer complies with G.S. 58-1-35 and G.S. 58-1-36. ~~Provided, however, that G.S. 58-1-36 does not apply to a service agreement contract offered by a person primarily engaged in the retail sale of goods and services who incidentally offers service agreement contracts and has a net worth of one hundred million dollars ($100,000,000), has offered service agreement contracts for at least the preceding 10 years, and is required to file an SEC Form 10K.~~ This section does not apply to any warranty made by a builder or seller of real property relating to home appliances that are sold along with real property. This section does not apply to any issuer of credit cards or charge cards that markets home appliance service agreements as an ancillary part of its business; provided, however, that such issuer maintains insurance in accordance with G.S. 58-1-36.

(b) The following definitions apply in this section:

(1) ~~Home appliance. Includes~~ 'Home appliance' means a clothes washing machine or dryer; kitchen appliance; vacuum cleaner; sewing machine; home audio or video electronic equipment; home electronic data processing equipment; home exercise and fitness equipment; home healthcare equipment; power tools; ~~or~~ heater or air conditioner, other than a permanently installed unit using internal ~~ductwork.~~ductwork; or other personal consumer goods.

(2) ~~Home appliance service agreement. Any~~ 'Home appliance service agreement' means any contract or agreement indemnifying the home appliance service agreement holder against loss caused by failure, arising out of the ownership, operation, or use of a home appliance, of a mechanical or other component part of the home appliance that is listed in the agreement.

(3) ~~Home appliance service agreement company. Any~~ 'Home appliance service agreement company' means any person that issues home appliance service agreements and that is not a licensed insurer.

(c) through (g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 730, s. 3."

SECTION 1(c). G.S. 58-1-36 reads as rewritten:

"§ 58-1-36. Insurance policy requirements.

(a) Each ~~service agreement~~ company or person subject to this section shall maintain contractual liability insurance or service agreement reimbursement insurance with an authorized insurer for one hundred percent (100%) of claims exposure,

including reported and incurred but not reported claims and claims expenses, on business written in this ~~State.~~State unless the company or person:

(1) maintains a net worth of one hundred million dollars ($100,000,000);

(2) has offered service agreement contracts or warranties, as applicable to the respective company or person, for at least the preceding 10 years; and

(3) is either required to file and has filed an SEC Form 10K or Form 20-F with the Securities and Exchange Commission (SEC) within the last calendar year, or, if the company does not file with the SEC, can produce, upon request, a copy of the company's audited financial statements, which show a net worth of the company or person of at least one hundred million dollars ($100,000,000). A company or person may utilize its parent company's Form 10-K, Form 20-F, or audited financial statements to satisfy this requirement if the parent company agrees to guarantee the obligations of the company or person relating to service agreement contracts or warranties, as applicable to the respective company or person, sold by the company or person in this State.

(b) All forms relating to insurance policies written by authorized insurers under this section shall be filed with and approved by the Commissioner before they may be used for any purpose in this State, irrespective of whether the insurers are licensed insurers.

(c) Each policy shall contain the following provisions:

(1) If the ~~service agreement~~ company or person does not fulfill its obligations under service agreements or warranties issued in this State for any reason, including federal bankruptcy or state receivership proceedings, the insurer will pay losses and unearned premium refunds directly to any person making the claim under the service agreement.

(2) The insurer shall assume full responsibility for the administration of claims if the ~~service agreement~~ company or person is unable to do so.

(3) The policy is subject to the cancellation, nonrenewal, and renewal provisions of G.S. 58-41-15, 58-41-20, 58-41-25, and 58-41-40.

(4) The policy shall insure all service agreements and warranties that were issued while the policy was in effect, regardless of whether the premium was remitted to the insurer.

(5) If the insurer is fulfilling any service agreement covered by the policy and if the service agreement holder cancels the service agreement, the insurer shall make a full refund of the unearned premium to the consumer pursuant to G.S. 58-1-35(e)(3). This subdivision only applies to service agreement companies.

(d) The Commissioner may adopt rules, in addition to the requirements of this section, governing the terms and conditions of policy forms for the insurance required by this section.

(e) Persons and companies subject to G.S. 58-1-15, 58-1-20, 58-1-25, 58-1-30, and 58-1-40 are subject to and shall comply with this section. The Commissioner may enforce compliance with this section using the provisions of Article 2 of this Chapter."

SECTION 2. G.S. 58-1-35 is amended by adding a new subsection to read:

"(m) If not submitted electronically, all contracts, literature, advertising materials, letters, and other documents submitted to the Department to comply with the filing requirements of this Chapter or an administrative rule adopted pursuant to this Chapter shall be submitted on paper eight and one-half inches by eleven inches. Brochures and pamphlets shall not be stapled or bound."

SECTION 3. G.S. 58-3-150 is amended by adding a new subsection to read:

"(c) If not submitted electronically, all contracts, literature, advertising materials, letters, and other documents submitted to the Department to comply with the filing requirements of this Chapter or an administrative rule adopted pursuant to this Chapter shall be submitted on paper eight and one-half inches by eleven inches. Brochures and pamphlets shall not be stapled or bound."

SECTION 4. Article 1 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-1-40. Mechanical breakdown service agreements.**

(a) Except as provided in subsection (c) of this section, all mechanical breakdown service agreement companies soliciting business in this State shall comply with G.S. 58-1-35 and G.S. 58-1-36.

(b) As used in this section, 'mechanical breakdown service agreement companies' include any person that issues mechanical breakdown service agreements and is not a licensed insurer, and 'mechanical breakdown service agreements' are applicable to mechanized equipment, including automobiles, riding mowers, scooters, generators, farm implements, logging equipment, road graders, bulldozers, and power equipment not licensed for road use, whether mobile or not.

(c) This section does not apply to performance guarantees, warranties, mechanical breakdown service agreements, or motor vehicle service agreements made by:

(1) A manufacturer.
(2) A distributor.
(3) A subsidiary of a manufacturer or distributor."

SECTION 5(a). G.S. 58-37-50 reads as rewritten:

"**§ 58-37-50. Termination of insurance.**

(a) No member may terminate insurance to the extent that cession of a particular type of coverage and limits is available under the provisions of this Article except for the following reasons:

(1) Nonpayment of premium when due to the insurer or producing agent.
(2) The named insured has become a nonresident of this State and would not otherwise be entitled to insurance on submission of new application under this Article.
(3) A member company has terminated an agency contract for reasons other than the quality of the agent's insureds or the agent has terminated the contract and such agent represented the company in taking the original application for insurance.

(4) When the insurance contract has been cancelled pursuant to a power of attorney given a company licensed pursuant to the provisions of G.S. 58-35-5.

(5) The named insured, at the time of renewal, fails to meet the requirements contained in the corporate charter, articles of incorporation, and/or bylaws of the insurer, when the insurer is a company organized for the sole purpose of providing members of an organization with insurance policies in North Carolina.

(b) Notwithstanding subsection (a) of this section, a member may terminate insurance when payment is due and a check tendered in payment of premium is dishonored by the bank because the account on which the check is drawn contains insufficient funds or is a closed or nonexistent account."

SECTION 5(b). G.S. 58-36-85(b) reads as rewritten:

(b) Termination Restrictions. – An insurer shall not terminate a policy for a reason that is not specified in ~~G.S. 58-37-50(1) through (5)~~ G.S. 58-37-50(a)(1) through (a)(5), G.S. 58-37-50(b) or G.S. 58-36-65(g). A termination of a policy is not effective unless the insurer either has notified a named insured of the termination by sending a written termination notice by first class mail to the insured's last known address or is not required by this subsection to send a written termination notice. Proof of mailing of a written termination notice is proof that the notice was sent.

An insurer is not required to send a written termination notice if any of the following applies:

(1) The insurer has manifested its willingness to renew the policy by issuing or offering to issue a renewal policy, a certificate, or other evidence of renewal.

(2) The insurer has manifested its willingness to renew the policy by any means not described in subdivision (1) of this subsection, including mailing a premium notice or expiration notice by first class mail to the named insured and the failure of the insured to pay the required premium on or before the premium due date.

(3) A named insured has given written notification to the insurer or its agent that the named insured wants the policy to be terminated.

(4) The insurer has terminated coverage or a policy pursuant to G.S. 58-37-50(b)."

SECTION 6. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-33-18. Limited license for self-service storage companies.**

(a) As used in this section:

(1) "Limited licensee" means a person authorized to sell certain coverages relating to the rental of self-service storage units pursuant to the provisions of this section and Article 39 of Chapter 66 of the General Statutes.

(2) "Rental agreement" means any written agreement setting forth the terms and conditions governing the use of a storage unit provided by the owner of a self-service storage facility company.

(3) "Self-service storage company" means any person in the business of renting storage units to the public.

(4) "Renter" or "occupant" means any person obtaining the use of a storage unit from a self-service storage company under the terms of a rental agreement.

(5) "Storage unit" means a semi-enclosed or fully enclosed area, room or space that is primarily intended for the storage of personal property and which shall be accessible by the renter of the unit pursuant to the terms of the rental agreement.

(b) The Commissioner may issue to a self-service storage company, or to a franchisee of a self-service storage company, that has complied with the requirements of this section, a limited license authorizing the licensee, known as a "limited licensee" for the purpose of this Article, to act as agent, with reference to the kinds of insurance specified in this section, of any insurer authorized to write such kinds of insurance in this State.

(c) The prerequisites for issuance of a limited license under this section are the filing with the Commissioner of the following:

(1) A written application, signed by an officer of the applicant, for the limited license in such form or forms, and supplements thereto, and containing such information, as the Commissioner may prescribe; and

(2) A certificate by the insurer that is to be named in such limited license, stating that it has satisfied itself that the named applicant is trustworthy and competent to act as its insurance agent for this limited purpose and that the insurer will appoint such applicant to act as the agent in reference to the doing of such kind or kinds of insurance as are permitted by this section, if the limited license applied for is issued by the Commissioner. Such certificate shall be subscribed by an officer or managing agent of such insurer and affirmed as true under the penalties of perjury.

(d) In the event that any provision of this section is violated by a limited licensee, the Commissioner may:

(1) Revoke or suspend a limited license issued under this section in accordance with the provisions of G.S. 58-33-46; or

(2) After notice and hearing, impose such other penalties, including suspending the transaction of insurance at specific rental locations where violations of this Article have occurred, as the Commissioner deems to be necessary or convenient to carry out the purposes of this section.

(e) The self-service storage company or franchisee licensed pursuant to subsection (b) of this section may act as agent for an authorized insurer only in

connection with the rental of storage units and only with respect to the following kinds of insurance:

(1) Personal effects insurance that provides coverage to renters of storage units at the same facility for the loss of, or damage to, personal effects that occurs at the same facility during the rental period; or

(2) Any other coverage that the Commissioner may approve as meaningful and appropriate in connection with the rental of storage units.

(f) No insurance may be issued pursuant to this section unless:

(1) The rental period of the rental agreement does not exceed two years; and

(2) At every self-service storage location where self-service storage agreements are executed, brochures or other written materials are readily available to the prospective renter that:

a. Summarize, clearly and correctly, the material terms of insurance coverage, including the identity of the insurer, offered to renters;

b. Disclose that these policies offered by the self-service storage company may provide a duplication of coverage already provided by a renter's homeowner's insurance policy, personal liability insurance policy, or other source of coverage;

c. State that the purchase by the renter of the kinds of insurance specified in this section is not required in order to rent a storage unit;

d. Describe the process for filing a claim in the event the renter elects to purchase coverage and in the event of a claim; and

e. Contain any additional information on the price, benefits, exclusions, conditions or other limitations of such policies as the Commissioner may by regulation prescribe; and

(3) Evidence of coverage is provided to every renter who elects to purchase such coverage.

(g) Any limited license issued under this section shall also authorize any employee of the licensee who, pursuant to subsection (h) of this section, is trained to act individually on behalf, and under the supervision, of the licensee with respect to the kinds of insurance specified in this section.

(h) Each self-service storage company or franchisee licensed pursuant to this section shall conduct a training program which shall be submitted to the Commissioner for approval prior to use and which shall meet the following minimum standards:

(1) Each trainee shall receive basic instruction about the kinds of insurance specified in this section offered for purchase by prospective renters of storage units;

(2) Each trainee shall be instructed to acknowledge to a prospective renter of a storage unit that purchase of any such insurance specified in this section is not required in order for the renter to rent a storage unit; and

(3) Each trainee shall be instructed to acknowledge to a prospective renter of a storage unit that the renter may have insurance policies that already provide the coverage being offered by the self-service storage company pursuant to this section.

(i) Limited licensees acting pursuant to and under the authority of this section shall comply with all applicable provisions of this Article, except that notwithstanding any other provision of this Article, or any rule adopted by the Commissioner, a limited licensee pursuant to this section shall not be required to treat premiums collected from renters purchasing such insurance when renting storage units as funds received in a fiduciary capacity, provided that:

(1) The insurer represented by the limited licensee has consented in writing, signed by the insurer's officer, that premiums need not be segregated from funds received by the self-service storage company on account of storage unit rental; and

(2) The charges for insurance coverage are itemized but not billed to the renter separately from the charges for storage units.

(j) No limited licensee under this section shall advertise, represent, or otherwise hold itself or any of its employees themselves out as licensed insurance agents or brokers."

SECTION 7. Sections 1 through 4 and Section 6 of this act become effective October 1, 2003. The remainder of this act is effective when it becomes law.

DEPARTMENT OF INSURANCE

State of North Carolina

P. O. Box 26387
RALEIGH, N. C. 27611

JIM LONG
COMMISSIONER OF INSURANCE

LEGISLATIVE COUNSEL
(919) 733-4529

MEMORANDUM

TO: Senate Commerce Committee

FROM: Frank W. Folger, Legislative Counsel

DATE: May 20, 2003

Summary of PCS to HOUSE BILL 283 – PROPERTY AND CASUALTY INSURANCE OMNIBUS/AB
Section-by-Section Bill Summary
(Changes made by the PCS are boldfaced, bracketed or both)

Section 1(a). (Section 1 in the previous editions) Creates a new subsection (c) in G.S. 58-1-20 governing real property warranties to require that persons or companies selling these warranties carry contractual liability insurance, as is already required of other service agreement companies.

Sections 1(b) and 1(c). (NEW) Expand the applicability of the home appliance service agreement companies provisions by applying it to dealers of "home exercise and fitness equipment; home healthcare equipment; power tools; and other consumer goods." Also, rewrite and expand existing law to ensure that all Article 1 service agreement companies and persons issuing warranties under Article 1 must satisfy the same or similar contractual liability policies and may exempt themselves from that requirement under the same or similar rules, which are expanded to allow for the use of parent company filings and financial statements when the parent company agrees to cover the obligations of the subsidiary service agreement company or warranty company.
Section 1(c) (Section 2 in the previous editions) Also clarifies that service agreement and warranty companies must comply with the statutory requirements

in Article 1 of Chapter 58 and subjects them to the enforcement authority of the Commissioner and the Department under Article 2, which provides the Commissioner with the authority to issue cease and desist orders, mandate compliance under specified times, impose civil penalties, and seize and examine records.

Section 2. (Section 3 in the previous editions) Requires motor vehicle and home appliance service agreement companies, when submitting required documentation in paper form, to do so on 8 1/2" x 11" format with pamphlets and brochures unbound or unstapled. This requirement will facilitate scanning and mitigate administrative time wasted.

Section 3. (Section 4 in the previous editions) Requires insurance companies, when submitting required documentation in paper form, to do so on 8 1/2" x 11" format with pamphlets and brochures unbound or unstapled. This requirement will again facilitate scanning and mitigate administrative time wasted.

Section 4. (Section 5 in the previous editions) Creates a new statute G.S. 58-1-40 to define "mechanical breakdown service agreement companies" and "mechanical breakdown service agreements" and to clarify that mechanical breakdown service agreement companies are subject to the requirements for motor vehicle and home appliance service agreement companies in G.S. 58-1-35. This change is "technical" in that it clarifies by statute, definitions and rules are being applied to these companies.

Section 5. (Section 6 in the previous editions) Allows termination of a non-fleet private passenger motor vehicle insurance policy for payment with a bad check when payment is due.

Section 6. (NEW) Creates a new statute (G.S. 58-33-18) to authorize the issuance of limited licenses to self-service storage companies to sell coverage for personal property stored in self-service storage units. The provision mirrors G.S. 55-33-17, which authorizes the issuance of limited licenses to rental car companies for similar purposes.

Section 7. Makes Sections 1 through 4 and Section 6 of the act effective October 1, 2003 and the remainder of the act effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5/20/03

S. B. No. _____ Amendment No. #1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) _____

moves to amend the bill on page 8, line 19

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"brokers. ~~No~~ No ~~person~~ renter or occupant may be required to obtain insurance under this section as a condition of ~~entering into~~ obtaining a rental agreement for a storage unit. The renter shall be informed that the insurance offered under this section is not ~~mandat~~ required as a condition of for obtaining a rental agreement for a storage unit."

SIGNED Tony Rand

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H283 DATE 5/20/03

S. B. No. _____ Amendment No. #2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓ H283-CSRC-5B[v.1]

Rep.) Sen.) Purcell

1 moves to amend the bill on page 5, lines 10-11
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the lines to read:
4
5 " insurance when payment is due and
6 payment of premium is dishonored
7 by the financial institution
8 because the account on which the
9 payment is drawn contains " ;
10
11 and on page 8, line 20, by
12 deleting "the" phrase " and Section 6 ".
13
14
15
16
17
18
19

SIGNED William R Purcell

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 283

Committee Substitute Favorable 4/17/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H283-PCS50286-RC-58

Short Title: Property and Casualty Insurance Omnibus.-AB (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE REAL PROPERTY WARRANTY COMPANIES TO CARRY CONTRACTUAL LIABILITY POLICIES; ESTABLISH GREATER UNIFORMITY AND FLEXIBILITY FOR REQUIREMENTS IMPOSED UPON SERVICE AGREEMENT COMPANIES AND PERSONS THAT ISSUE WARRANTIES UNDER ARTICLE 1 OF CHAPTER 58; EXPAND THE DEFINITION OF HOME APPLIANCE WITHIN THE HOME APPLIANCE SERVICE AGREEMENT COMPANIES STATUTE; ENHANCE ENFORCEMENT OF ARTICLE 1 OF CHAPTER 58; REQUIRE MOTOR VEHICLE AND HOME APPLIANCE SERVICE AGREEMENT COMPANIES TO USE A SPECIFIC FORMAT ON ALL WRITTEN MATERIALS SUBMITTED; MANDATE ALL REQUIRED INSURER SUBMISSIONS TO THE DEPARTMENT OF INSURANCE TO BE IN A SPECIFIC FORMAT IF IN WRITING; DEFINE MECHANICAL BREAKDOWN SERVICE AGREEMENTS AND REQUIRE ALL MECHANICAL BREAKDOWN SERVICE AGREEMENT COMPANIES TO COMPLY WITH ARTICLE 1 OF CHAPTER 58 OF THE GENERAL STATUTES AND WITH THE RULES REGARDING MOTOR VEHICLE AND HOME APPLIANCE SERVICE AGREEMENT COMPANIES; PROVIDE THAT A BAD CHECK CONSTITUTES GROUNDS FOR TERMINATION OF A MOTOR VEHICLE LIABILITY INSURANCE POLICY; AND AUTHORIZE THE ISSUANCE OF LIMITED LICENSES FOR THE SALE OF INSURANCE COVERAGE ON PERSONAL PROPERTY STORED IN SELF-SERVICE STORAGE UNITS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-1-20 is amended by adding a new subsection to read:

"(c) Persons issuing real property warranties shall comply with the requirements of G.S. 58-1-36."

SECTION 1.(b) G.S. 58-1-30 reads as rewritten:

"§ 58-1-30. Home appliance service agreement companies.

(a) This section applies to all home appliance service agreement companies soliciting business in this State, but it does not apply to performance guarantees or warranties made by manufacturers in connection with the sale of new home appliances. This section does not apply to any home appliance dealer licensed to do business in this State (i) whose primary business is the retail sale and service of home appliances; (ii) who makes and administers its own service agreements without association with any other entity; and (iii) whose service agreements cover only appliances sold by the dealer to its retail customers, provided that the dealer complies with G.S. 58-1-35 and G.S. 58-1-36. ~~Provided, however, that G.S. 58-1-36 does not apply to a service agreement contract offered by a person primarily engaged in the retail sale of goods and services who incidentally offers service agreement contracts and has a net worth of one hundred million dollars ($100,000,000), has offered service agreement contracts for at least the preceding 10 years, and is required to file an SEC Form 10K.~~ This section does not apply to any warranty made by a builder or seller of real property relating to home appliances that are sold along with real property. This section does not apply to any issuer of credit cards or charge cards that markets home appliance service agreements as an ancillary part of its business; provided, however, that such issuer maintains insurance in accordance with G.S. 58-1-36.

(b) The following definitions apply in this section:

(1) ~~Home appliance. Includes~~ 'Home appliance' means a clothes washing machine or dryer; kitchen appliance; vacuum cleaner; sewing machine; home audio or video electronic equipment; home electronic data processing equipment; home exercise and fitness equipment; home health care equipment; power tools; ~~or~~ heater or air conditioner, other than a permanently installed unit using internal ~~ductwork.~~ductwork; or other personal consumer goods.

(2) ~~Home appliance service agreement. Any~~ 'Home appliance service agreement' means any contract or agreement indemnifying the home appliance service agreement holder against loss caused by failure, arising out of the ownership, operation, or use of a home appliance, of a mechanical or other component part of the home appliance that is listed in the agreement.

(3) ~~Home appliance service agreement company. Any~~ 'Home appliance service agreement company' means any person that issues home appliance service agreements and that is not a licensed insurer.

(c) through (g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 730, s. 3."

SECTION 1.(c) G.S. 58-1-36 reads as rewritten:

"§ 58-1-36. Insurance policy requirements.

(a) Each ~~service agreement~~ company or person subject to this section shall maintain contractual liability insurance or service agreement reimbursement insurance

with an authorized insurer for one hundred percent (100%) of claims exposure, including reported and incurred but not reported claims and claims expenses, on business written in this ~~State.~~State unless the company or person:

(1) Maintains a net worth of one hundred million dollars ($100,000,000);

(2) Has offered service agreement contracts or warranties, as applicable to the respective company or person, for at least the preceding 10 years; and

(3) Either is required to file and has filed an SEC Form 10K or Form 20-F with the Securities and Exchange Commission (SEC) within the last calendar year or, if the company does not file with the SEC, can produce, upon request, a copy of the company's audited financial statements, which show a net worth of the company or person of at least one hundred million dollars ($100,000,000). A company or person may utilize its parent company's Form 10-K, Form 20-F, or audited financial statements to satisfy this requirement if the parent company agrees to guarantee the obligations of the company or person relating to service agreement contracts or warranties, as applicable to the respective company or person, sold by the company or person in this State.

(b) All forms relating to insurance policies written by authorized insurers under this section shall be filed with and approved by the Commissioner before they may be used for any purpose in this State, irrespective of whether the insurers are licensed insurers.

(c) Each policy shall contain the following provisions:

(1) If the ~~service agreement~~ company or person does not fulfill its obligations under service agreements or warranties issued in this State for any reason, including federal bankruptcy or state receivership proceedings, the insurer will pay losses and unearned premium refunds directly to any person making the claim under the service agreement.

(2) The insurer shall assume full responsibility for the administration of claims if the ~~service agreement~~ company or person is unable to do so.

(3) The policy is subject to the cancellation, nonrenewal, and renewal provisions of G.S. 58-41-15, 58-41-20, 58-41-25, and 58-41-40.

(4) The policy shall insure all service agreements and warranties that were issued while the policy was in effect, regardless of whether the premium was remitted to the insurer.

(5) If the insurer is fulfilling any service agreement covered by the policy and if the service agreement holder cancels the service agreement, the insurer shall make a full refund of the unearned premium to the consumer pursuant to G.S. 58-1-35(e)(3). This subdivision applies only to service agreement companies.

(d) The Commissioner may adopt rules, in addition to the requirements of this section, governing the terms and conditions of policy forms for the insurance required by this section.

(e) Persons and companies subject to G.S. 58-1-15, 58-1-20, 58-1-25, 58-1-30, and 58-1-40 are subject to and shall comply with this section. The Commissioner may enforce compliance with this section using the provisions of Article 2 of this Chapter."

SECTION 2. G.S. 58-1-35 is amended by adding a new subsection to read:

"(m) If not submitted electronically, all contracts, literature, advertising materials, letters, and other documents submitted to the Department to comply with the filing requirements of this Chapter or an administrative rule adopted pursuant to this Chapter shall be submitted on paper eight and one-half inches by eleven inches. Brochures and pamphlets shall not be stapled or bound."

SECTION 3. G.S. 58-3-150 is amended by adding a new subsection to read:

"(c) If not submitted electronically, all contracts, literature, advertising materials, letters, and other documents submitted to the Department to comply with the filing requirements of this Chapter or an administrative rule adopted pursuant to this Chapter shall be submitted on paper eight and one-half inches by eleven inches. Brochures and pamphlets shall not be stapled or bound."

SECTION 4. Article 1 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-1-40. Mechanical breakdown service agreements.**

(a) Except as provided in subsection (c) of this section, all mechanical breakdown service agreement companies soliciting business in this State shall comply with G.S. 58-1-35 and G.S. 58-1-36.

(b) As used in this section, 'mechanical breakdown service agreement companies' include any person that issues mechanical breakdown service agreements and is not a licensed insurer, and 'mechanical breakdown service agreements' are applicable to mechanized equipment, including automobiles, riding mowers, scooters, generators, farm implements, logging equipment, road graders, bulldozers, and power equipment not licensed for road use, whether mobile or not.

(c) This section does not apply to performance guarantees, warranties, mechanical breakdown service agreements, or motor vehicle service agreements made by:

(1) A manufacturer.

(2) A distributor.

(3) A subsidiary of a manufacturer or distributor."

SECTION 5.(a) G.S. 58-37-50 reads as rewritten:

"**§ 58-37-50. Termination of insurance.**

(a) No member may terminate insurance to the extent that cession of a particular type of coverage and limits is available under the provisions of this Article except for the following reasons:

(1) Nonpayment of premium when due to the insurer or producing agent.

(2) The named insured has become a nonresident of this State and would not otherwise be entitled to insurance on submission of new application under this Article.

(3) A member company has terminated an agency contract for reasons other than the quality of the agent's insureds or the agent has

terminated the contract and such agent represented the company in taking the original application for insurance.

(4) When the insurance contract has been cancelled pursuant to a power of attorney given a company licensed pursuant to the provisions of G.S. 58-35-5.

(5) The named insured, at the time of renewal, fails to meet the requirements contained in the corporate charter, articles of incorporation, and/or bylaws of the insurer, when the insurer is a company organized for the sole purpose of providing members of an organization with insurance policies in North Carolina.

(b) Notwithstanding subsection (a) of this section, a member may terminate insurance when payment is due and payment of premium is dishonored by the financial institution because the account on which the payment is drawn contains insufficient funds or is a closed or nonexistent account."

SECTION 5.(b) G.S. 58-36-85(b) reads as rewritten:

"(b) Termination Restrictions. – An insurer shall not terminate a policy for a reason that is not specified in ~~G.S. 58-37-50(1) through (5)~~ G.S. 58-37-50(a)(1) through (a)(5), 58-37-50(b); or ~~G.S.~~ 58-36-65(g). A termination of a policy is not effective unless the insurer either has notified a named insured of the termination by sending a written termination notice by first class mail to the insured's last known address or is not required by this subsection to send a written termination notice. Proof of mailing of a written termination notice is proof that the notice was sent.

An insurer is not required to send a written termination notice if any of the following applies:

(1) The insurer has manifested its willingness to renew the policy by issuing or offering to issue a renewal policy, a certificate, or other evidence of renewal.

(2) The insurer has manifested its willingness to renew the policy by any means not described in subdivision (1) of this subsection, including mailing a premium notice or expiration notice by first class mail to the named insured and the failure of the insured to pay the required premium on or before the premium due date.

(3) A named insured has given written notification to the insurer or its agent that the named insured wants the policy to be terminated.

(4) The insurer has terminated coverage or a policy pursuant to G.S. 58-37-50(b)."

SECTION 6. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-33-18. Limited license for self-service storage companies.**

(a) As used in this section:

(1) 'Limited licensee' means a person authorized to sell certain coverages relating to the rental of self-service storage units pursuant to the provisions of this section and Article 39 of Chapter 66 of the General Statutes.

(2) 'Rental agreement' means any written agreement setting forth the terms and conditions governing the use of a storage unit provided by the owner of a self-service storage facility company.

(3) 'Self-service storage company' means any person in the business of renting storage units to the public.

(4) 'Renter' or 'occupant' means any person obtaining the use of a storage unit from a self-service storage company under the terms of a rental agreement.

(5) 'Storage unit' means a semienclosed or fully enclosed area, room, or space that is primarily intended for the storage of personal property and which shall be accessible by the renter of the unit pursuant to the terms of the rental agreement.

(b) The Commissioner may issue to a self-service storage company, or to a franchisee of a self-service storage company, that has complied with the requirements of this section a limited license authorizing the licensee, known as a 'limited licensee' for the purpose of this Article, to act as agent, with reference to the kinds of insurance specified in this section of any insurer authorized to write such kinds of insurance in this State.

(c) The prerequisites for issuance of a limited license under this section are the filing with the Commissioner of the following:

(1) A written application, signed by an officer of the applicant, for the limited license in such form or forms, and supplements thereto, and containing such information as the Commissioner may prescribe; and

(2) A certificate by the insurer that is to be named in such limited license, stating that it has satisfied itself that the named applicant is trustworthy and competent to act as its insurance agent for this limited purpose and that the insurer will appoint such applicant to act as the agent in reference to the doing of such kind or kinds of insurance as are permitted by this section if the limited license applied for is issued by the Commissioner. Such certificate shall be subscribed by an officer or managing agent of such insurer and affirmed as true under the penalties of perjury.

(d) In the event that any provision of this section is violated by a limited licensee, the Commissioner may:

(1) Revoke or suspend a limited license issued under this section in accordance with the provisions of G.S. 58-33-46; or

(2) After notice and hearing, impose such other penalties, including suspending the transaction of insurance at specific rental locations where violations of this Article have occurred, as the Commissioner deems to be necessary or convenient to carry out the purposes of this section.

(e) The self-service storage company or franchisee licensed pursuant to subsection (b) of this section may act as agent for an authorized insurer only in

connection with the rental of storage units and only with respect to the following kinds of insurance:

(1) Personal effects insurance that provides coverage to renters of storage units at the same facility for the loss of, or damage to, personal effects that occurs at the same facility during the rental period; or

(2) Any other coverage that the Commissioner may approve as meaningful and appropriate in connection with the rental of storage units.

(f) No insurance may be issued pursuant to this section unless:

(1) The rental period of the rental agreement does not exceed two years; and

(2) At every self-service storage location where self-service storage agreements are executed, brochures or other written materials are readily available to the prospective renter that:

a. Summarize, clearly and correctly, the material terms of insurance coverage, including the identity of the insurer, offered to renters;

b. Disclose that these policies offered by the self-service storage company may provide a duplication of coverage already provided by a renter's homeowners' insurance policy, personal liability insurance policy, or other source of coverage;

c. State that the purchase by the renter of the kinds of insurance specified in this section is not required in order to rent a storage unit;

d. Describe the process for filing a claim in the event the renter elects to purchase coverage and in the event of a claim; and

e. Contain any additional information on the price, benefits, exclusions, conditions, or other limitations of such policies as the Commissioner may by regulation prescribe; and

(3) Evidence of coverage is provided to every renter who elects to purchase such coverage.

(g) Any limited license issued under this section shall also authorize any employee of the licensee who is trained, pursuant to subsection (h) of this section, to act individually on behalf, and under the supervision, of the licensee with respect to the kinds of insurance specified in this section.

(h) Each self-service storage company or franchisee licensed pursuant to this section shall conduct a training program which shall be submitted to the Commissioner for approval prior to use and which shall meet the following minimum standards:

(1) Each trainee shall receive basic instruction about the kinds of insurance specified in this section offered for purchase by prospective renters of storage units;

(2) Each trainee shall be instructed to acknowledge to a prospective renter of a storage unit that purchase of any such insurance specified in this section is not required in order for the renter to rent a storage unit; and

(3) Each trainee shall be instructed to acknowledge to a prospective renter of a storage unit that the renter may have insurance policies that already provide the coverage being offered by the self-service storage company pursuant to this section.

(i) Limited licensees acting pursuant to and under the authority of this section shall comply with all applicable provisions of this Article, except that notwithstanding any other provision of this Article, or any rule adopted by the Commissioner, a limited licensee pursuant to this section shall not be required to treat premiums collected from renters purchasing such insurance when renting storage units as funds received in a fiduciary capacity, provided that:

(1) The insurer represented by the limited licensee has consented in writing, signed by the insurer's officer, that premiums need not be segregated from funds received by the self-service storage company on account of storage unit rental; and

(2) The charges for insurance coverage are itemized but not billed to the renter separately from the charges for storage units.

(j) No limited licensee under this section shall advertise, represent, or otherwise hold itself or any of its employees out as licensed insurance agents or brokers. No renter or occupant may be required to obtain insurance under this section as a condition of obtaining a rental agreement for a storage unit. The renter shall be informed that the insurance offered under this section is not required as a condition for obtaining a rental agreement for a storage unit."

SECTION 7. Sections 1 through 4 of this act become effective October 1, 2003. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 358

Committee Substitute Favorable 4/1/03

Short Title: Increase Damage Limits for MV Accidents. (Public)

Sponsors:

Referred to:

March 10, 2003

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE DAMAGE AMOUNTS ON DEFINED MOTOR VEHICLE ACCIDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-36-75(a) reads as rewritten:

"(a) The subclassification plan promulgated pursuant to G.S. 58-36-65(b) may provide for separate surcharges for major, intermediate, and minor accidents. A "major accident" is an at-fault accident that results in either (i) bodily injury or death or (ii) only property damage of ~~two thousand five hundred dollars ($2,500)~~ three thousand dollars ($3,000) or more. An "intermediate accident" is an at-fault accident that results in only property damage of more than ~~one thousand five hundred dollars ($1,500)~~ one thousand eight hundred dollars ($1,800) but less than ~~two thousand five hundred dollars ($2,500).~~three thousand dollars ($3,000). A "minor accident" is an at-fault accident that results in only property damage of ~~one thousand five hundred dollars ($1,500)~~ one thousand eight hundred dollars ($1,800) or less. The subclassification plan may also exempt certain minor accidents from the Facility recoupment surcharge. The Bureau shall assign varying Safe Driver Incentive Plan point values and surcharges for bodily injury in at-fault accidents that are commensurate with the severity of the injury, provided that the point value and surcharge assigned for the most severe bodily injury shall not exceed the point value and surcharge assigned to a major accident involving only property damage."

SECTION 2. This act becomes effective October 1, 2003.

HOUSE BILL 358:
Increase Damage Limits for MV Accidents

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Starnes
Date:	May 19, 2003	**Summary by:**	Kory J. Goldsmith
Version:	2nd Edition		Committee Counsel

SUMMARY: HB 358 would increase the property damage amounts that determine whether and how many insurance points a driver will be charged under the Safe Driver Incentive Plan (SDIP).

CURRENT LAW: G.S. 58-36-75(a) sets monetary property damage limits and defines the types of at-fault accidents. They are:

- Major accident - $2,500 dollars or more.
- Intermediate accident – Less than $2,500, but more than $1,500.
- Minor accident – $1,500 or less.

Under the SDIP, the accident classification determines the number of points assessed and therefore the percentage increase for insurance premiums. They are:

- Major accident = 3 points = 65% rate of increase.
- Intermediate accident = 2 points = 45% rate of increase.
- Minor accident = 1 point = 25% rate of increase.

The increases may be charged for at-fault accidents occurring during the experience period. The experience period is the three years immediately preceding the date of the application or the preparation of the renewal.

BILL ANALYSIS: HB 358 increases the property damage limits that define the types of at-fault accidents. Under the bill, the categories would be:

- Major accident - $3,000 dollars or more.
- Intermediate accident – Less than $3,000, but more than $1,800.
- Minor accident – $1,800 or less.

BACKGROUND: In 1987, the statutory rates were:

- Major accident - $2,000 dollars or more.
- Intermediate accident – Less than $2,000, but more than $1,000.
- Minor accident – $1,000 or less.

These limits were increased to the current levels in 1997.

H358-SMRC-002

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2

H. B. No. 358 DATE 5/20/03

S. B. No. Amendment No. #1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE

Rep.)
Sen.) Purcell

1 moves to amend the bill on page 1, line 22
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the line to read:
4
5 "Section 2. This act becomes
6 effective January 1, 2004 and
7 applies to accidents occurring
8 on and after that date."
9
10
11
12
13
14
15
16
17
18
19

SIGNED William N Purcell

ADOPTED X FAILED TABLED

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 1

HOUSE BILL 744*

Short Title:	Managed Care Patient Assistance.	(Public)
Sponsors:	Representatives Hackney; Alexander, Glazier, Harrell, Insko, Lucas, Luebke, McLawhorn, Rapp, Ross, Wainwright, Weiss, and Womble.	
Referred to:	Insurance.	

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE INSURERS TO INFORM COVERED PERSONS ABOUT ASSISTANCE AVAILABLE FROM THE MANAGED CARE PATIENT ASSISTANCE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-50-61(h), (k), and (m) read as rewritten:

"**§ 58-50-61. Utilization review.**

...

(h) Notice of Noncertification. – A written notification of a noncertification shall include all reasons for the noncertification, including the clinical rationale, the instructions for initiating a voluntary appeal or reconsideration of the noncertification, and the instructions for requesting a written statement of the clinical review criteria used to make the noncertification. An insurer shall provide the clinical review criteria used to make the noncertification to any person who received the notification of the noncertification and who follows the procedures for a request. An insurer shall also inform the covered person in writing about the availability of assistance from the Managed Care Patient Assistance Program, including the telephone number and address of the Program.

...

(k) Nonexpedited Appeals. – Within three business days after receiving a request for a standard, nonexpedited appeal, the insurer shall provide the covered person with the name, address, and telephone number of the coordinator and information on how to submit written material. For standard, nonexpedited appeals, the insurer shall give written notification of the decision, in clear terms, to the covered person and the covered person's provider within 30 days after the insurer receives the request for an appeal. If the decision is not in favor of the covered person, the written decision shall contain:

(1) The professional qualifications and licensure of the person or persons reviewing the appeal.

(2) A statement of the reviewers' understanding of the reason for the covered person's appeal.

(3) The reviewers' decision in clear terms and the medical rationale in sufficient detail for the covered person to respond further to the insurer's position.

(4) A reference to the evidence or documentation that is the basis for the decision, including the clinical review criteria used to make the determination, and instructions for requesting the clinical review criteria.

(5) A statement advising the covered person of the covered person's right to request a second-level grievance review and a description of the procedure for submitting a second-level grievance under G.S. 58-50-62.

(6) Notice of the availability of assistance from the Managed Care Patient Assistance Program, including the telephone number and address of the Program.

...

(m) Disclosure Requirements. – In the certificate of coverage and member handbook provided to covered persons, an insurer shall include a clear and comprehensive description of its utilization review procedures, including the procedures for appealing noncertifications and a statement of the rights and responsibilities of covered persons, including the voluntary nature of the appeal process, with respect to those procedures. An insurer shall also include in the certificate of coverage and the member handbook information about the availability of assistance from the Managed Care Patient Assistance Program, including the telephone number and address of the Program. An insurer shall include a summary of its utilization review procedures in materials intended for prospective covered persons. An insurer shall print on its membership cards a toll-free telephone number to call for utilization review purposes."

SECTION 2.(a) G.S. 58-50-62(c) reads as rewritten:

"(c) Grievance Procedures. – Every insurer shall have written procedures for receiving and resolving grievances from covered persons. A description of the grievance procedures shall be set forth in or attached to the certificate of coverage and member handbook provided to covered persons. The description shall include a statement informing the covered person that the grievance procedures are voluntary and shall also inform the covered person about the availability of the Commissioner's office for assistance, including the telephone number and address of the office. The description shall also inform the covered person about the availability of assistance from the Managed Care Patient Assistance Program, including the telephone number and address of the Program."

SECTION 2.(b) G.S. 58-50-62(e)(2) reads as rewritten:

"(e) First-Level Grievance Review. – A covered person or a covered person's provider acting on the covered person's behalf may submit a grievance.

...

(2) An insurer shall issue a written decision, in clear terms, to the covered person and, if applicable, to the covered person's provider, within 30 days after receiving a grievance. The person or persons reviewing the grievance shall not be the same person or persons who initially handled the matter that is the subject of the grievance and, if the issue is a clinical one, at least one of whom shall be a medical doctor with appropriate expertise to evaluate the matter. Except as provided in subdivision (3) of this subsection, if the decision is not in favor of the covered person, the written decision issued in a first-level grievance review shall contain:

a. The professional qualifications and licensure of the person or persons reviewing the grievance.

b. A statement of the reviewers' understanding of the grievance.

c. The reviewers' decision in clear terms and the contractual basis or medical rationale in sufficient detail for the covered person to respond further to the insurer's position.

d. A reference to the evidence or documentation used as the basis for the decision.

e. A statement advising the covered person of his or her right to request a second-level grievance review and a description of the procedure for submitting a second-level grievance under this section.

f. Notice of the availability of assistance from the Managed Care Patient Assistance Program, including the telephone number and address of the Program."

SECTION 2.(c) G.S. 58-50-62(f)(1) reads as rewritten:

"(f) Second-Level Grievance Review. – An insurer shall establish a second-level grievance review process for covered persons who are dissatisfied with the first-level grievance review decision or a utilization review appeal decision. A covered person or the covered person's provider acting on the covered person's behalf may submit a second-level grievance.

...

(1) An insurer shall, within 10 business days after receiving a request for a second-level grievance review, make known to the covered person:

a. The name, address, and telephone number of a person designated to coordinate the grievance review for the insurer.

b. A statement of a covered person's rights, which include the right to request and receive from an insurer all information relevant to the case; attend the second-level grievance review; present his or her case to the review panel; submit supporting materials before and at the review meeting; ask questions of any member of the review panel; and be assisted or represented by a person of his or her choice, which person may be without limitation to: a provider, family member, employer

representative, or attorney. If the covered person chooses to be represented by an attorney, the insurer may also be represented by an attorney.

c. The availability of assistance from the Managed Care Patient Assistance Program, including the telephone number and address of the Program.

..."

SECTION 2.(d) G.S. 58-50-62(h) reads as rewritten:

"(h) Second-Level Grievance Review Decisions. – An insurer shall issue a written decision to the covered person and, if applicable, to the covered person's provider, within seven business days after completing the review meeting. The decision shall include:

(1) The professional qualifications and licensure of the members of the review panel.

(2) A statement of the review panel's understanding of the nature of the grievance and all pertinent facts.

(3) The review panel's recommendation to the insurer and the rationale behind that recommendation.

(4) A description of or reference to the evidence or documentation considered by the review panel in making the recommendation.

(5) In the review of a noncertification or other clinical matter, a written statement of the clinical rationale, including the clinical review criteria, that was used by the review panel to make the recommendation.

(6) The rationale for the insurer's decision if it differs from the review panel's recommendation.

(7) A statement that the decision is the insurer's final determination in the matter. In cases where the review concerned a noncertification and the insurer's decision on the second-level grievance review is to uphold its initial noncertification, a statement advising the covered person of his or her right to request an external review and a description of the procedure for submitting a request for external review to the Commissioner of Insurance.

(8) Notice of the availability of the Commissioner's office for assistance, including the telephone number and address of the Commissioner's office.

(9) Notice of the availability of assistance from the Managed Care Patient Assistance Program, including the telephone number and address of the Program."

SECTION 3. G.S. 58-50-80(b)(3) reads as rewritten:

"**§ 58-50-80. Standard external review.**

...

"(b) Upon receipt of a request for an external review under subsection (a) of this section, the Commissioner shall, within 10 business days, complete all of the following:

...

(3) Notify in writing the covered person and the covered person's provider who performed or requested the service whether the request is complete and whether the request has been accepted for external review. If the request is complete and accepted for external review, the notice shall include a copy of the information that the insurer provided to the Commissioner pursuant to subdivision (b)(1) of this section, and inform the covered person that the covered person may submit to the assigned independent review organization in writing, within seven days after the receipt of the notice, additional information and supporting documentation relevant to the initial denial for the organization to consider when conducting the external review. If the covered person chooses to send additional information to the assigned independent review organization, then the covered person shall at the same time and by the same means, send a copy of that information to the insurer. The Commissioner shall also notify the covered person in writing of the availability of assistance from the Managed Care Patient Assistance Program, including the telephone number and address of the Program."

SECTION 4. This act becomes effective October 1, 2003, and applies to actions taken by the insurer under the subsections of G.S. 58-50-61, 58-50-62, and 58-50-80 amended by this act, on and after that date. G.S. 58-50-61, as amended by this act, applies to member handbooks printed after October 1, 2003.

HOUSE BILL 744:
Managed Care Patient Assistance

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	Representative Hackney
Date:	May 20, 2003	**Summary by:**	Tim Hovis
Version:	House Bill 744		Committee Counsel

SUMMARY: ***House Bill 744 amends various provisions law governing insurers and managed care organizations to require insurers and the Commissioner of Insurance to inform covered persons about the assistance that is available from the Managed Care Patient Assistance Program, which was established pursuant to S.L. 2001-446, the Managed Care Patient Bill of Rights. The act becomes effective October 1, 2003.***

CURRENT LAW: The General Assembly enacted Senate Bill 199, Managed Care Patient Bill of Rights in the 2001 General Session. The legislation required insurers to implement numerous patient protection measures and established a managed care patient assistance program (Program) to be administered by an existing State agency that was to be designated by the Governor. In 2002, the Governor established the program within the Office of the Attorney General. The Program has been up and operating since. The purpose of the Program is to provide information and assistance to individuals enrolled in managed care plans. The Program Director is required to publicize the Office.

BILL ANALYSIS: The bill requires insurers to inform covered persons about the availability of the assistance that is available from the Program, including its telephone number and address, at the following points of communication between the insurer and the covered person:

- At the time the insurer provides notice of "noncertification" – i.e., a notice that the insure will not reimburse a particular covered service or admission due to a determination that the requested covered health care service or admission does not meet the insurer's reimbursement requirements (e.g., the services or admission does not meet the insurer's requirements of medical necessity, appropriateness, etc.,).
- At the time the insurer provides written notification of its decision to deny the covered person's appeal of a noncertification decision.
- In the certificate of coverage and the member's handbook.
- In the insurer's written procedures concerning for receiving and resolving grievances from covered persons that are required to be included in the certificate of coverage and the member's handbook.
- At the time the insurer provides written notification of its decision to deny a first-level grievance.
- At the time the insurer provides written notification of its decision concerning the second level grievance review.

The bill also requires the Commissioner of Insurance to notify the covered person about the Program at the time the Commissioner informs the covered person whether the person's request for external review has been accepted or not.

The bill is effective October 1, 2003 and the provisions apply to communications on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 358
Committee Substitute Favorable 4/1/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H358-PCS70323-RC-59

Short Title: Increase Damage Limits for MV Accidents. (Public)

Sponsors:

Referred to:

March 10, 2003

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE DAMAGE AMOUNTS ON DEFINED MOTOR VEHICLE ACCIDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-36-75(a) reads as rewritten:

"(a) The subclassification plan promulgated pursuant to G.S. 58-36-65(b) may provide for separate surcharges for major, intermediate, and minor accidents. A "major accident" is an at-fault accident that results in either (i) bodily injury or death or (ii) only property damage of ~~two thousand five hundred dollars ($2,500)~~ three thousand dollars ($3,000) or more. An "intermediate accident" is an at-fault accident that results in only property damage of more than ~~one thousand five hundred dollars ($1,500)~~ one thousand eight hundred dollars ($1,800) but less than ~~two thousand five hundred dollars ($2,500).~~three thousand dollars ($3,000). A "minor accident" is an at-fault accident that results in only property damage of ~~one thousand five hundred dollars ($1,500)~~ one thousand eight hundred dollars ($1,800) or less. The subclassification plan may also exempt certain minor accidents from the Facility recoupment surcharge. The Bureau shall assign varying Safe Driver Incentive Plan point values and surcharges for bodily injury in at-fault accidents that are commensurate with the severity of the injury, provided that the point value and surcharge assigned for the most severe bodily injury shall not exceed the point value and surcharge assigned to a major accident involving only property damage."

SECTION 2. This act becomes effective January 1, 2004, and applies to accidents occurring on and after that date.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 20, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McAlister	Duke Energy
[illegible]	Progress Energy
[illegible]	Duke Energy
[illegible]	Allen Associates
Lorinzo Joyner	NC Utilities Commission
Mike Wilkins	"
CHRISTINE RYAN	NC DEPT OF JUSTICE - MCPA
Josh Stein	NCDOJ
[illegible]	NC AGO
Susan Valauri	Nationwide
RW Kaylor	Kaylor Law Firm
[illegible]	SABOR

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 20, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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Amy Dobson	NC State Watch
Katherine Davis	Electricities
Tom Wescott	Sprint
Sam J. Ervin, IV	NCUC
[illegible]	NASW
KEN MOORE	THE MULBERRY GROUP
Elizabeth Dalton	Bone & Assoc.
[illegible]	Moore & Van Allen
[illegible]	" "
Barbara Carsley	IC
Bill Scoggin	KCLH

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 20, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Rashad	Young, Moore
Joyce Peters	NCASSOC
Tom Duncan	NCAHP
Maria Spitt	NCAHP
Bill McAulay	PSNC Energy
Gardner Payne	McGuire Woods
Mike Causey	Automotive Service Assn (ASANC)
Sharon Miller	CUCA
Mark Benson	Capitol Group
Tom Moore	Sprint
Crissy Porter	Smith Anderson

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 20, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
KEVIN LEONARD	WCSR
Patrick Brewer	Lexmark
Bob Wells	Alliance of N.C. Telcos
Dwight Allen	NC Telephone Coalition
[illegible]	Bell Associates
	NCAHP

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, May 27, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **560** Disapprove Certain Life Insurance Rules.
Sequential Referral: None
Recommended Referral: None

H.B. **829** Annuity Nonforfeiture Rate Change.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **864** Guaranteed Energy Savings Contract Efficiency.
Sequential Referral: None
Recommended Referral: None

H.B. **900** Restaurant ABC Permits.
Sequential Referral: None
Recommended Referral: None

H.B. **1093** Technical Amendments/Insurance Guaranty Assoc.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 5

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, May 27, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **609** Enhance Elevator & Amusement Device Safety.

Draft Number:	PCS 60357
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Wednesday, May 28, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **276** Insurance Financial Amendments Omnibus.-AB

Draft Number:	PCS 30349
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

H.B.(CS #1) **357** No Credit Card Number on Receipts.

Draft Number:	PCS 60358
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

Senate Commerce Committee
Tuesday, May 27, 2003, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 276	Insurance Financial Amendments Omnibus.-AB	Representative Setzer
HB 357	No Credit Card Number on Receipts.	Representative Barnhart
HB 560	Disapprove Certain Life Insurance Rules.	Representative Holliman
HB 609	Enhance Elevator & Amusement Device Safety.	Representative Baker
HB 829	Annuity Nonforfeiture Rate Change.	Representative Holliman Representative Setzer
HB 864	Guaranteed Energy Savings Contract Efficiency.	Representative Saunders Representative Brubaker
HB 892	Workers Comp./Interstate Carrier Drivers.	Representative McComas Representative Saunders
HB 900	Restaurant ABC Permits.	Representative McComas Representative Gibson, III
HB 999	Toner/Inkjet Cartridges.	Representative Hackney Representative Sauls
HB 1093	Technical Amendments/Insurance Guaranty Assoc.	Representative Culpepper, III

Presentations

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, May 27, 2003 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, May 27, 2003, in Room 1027 of the Legislative Building. Eighteen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced the pages: William Dozier of Nashville, sponsored by Senator A. B. Swindell; and Katie Clemmons of New Bern, sponsored by Senator Scott Thomas.

Senator Soles introduced Representative Bill Culpepper to explain HB 1093, Technical Amendments/Insurance Guaranty Assoc. Senator Kay Hagan moved a favorable report of the bill. The motion carried.

Senator Soles introduced Representative Drew Saunders to explain HB 864, Guaranteed Energy Savings Contract Efficiency. Senator Tony Rand moved a favorable report of the bill. The motion carried.

Senator Soles brought up HB 999, Toner/Inkjet Cartridges, sponsored by Representative Joe Hackney. He told the committee there would be no vote taken on the bill at this meeting and asked if they wanted to discuss is today or wait until it would be voted on. The consensus was to wait, so the bill was displaced from the agenda. Senator Robert Pittenger asked to see a toner cartridge box from Lexmark and one from another company. He was shown a Lexmark box.

Senator Soles introduced Representative Preyer Gibson to explain HB 900, Restaurant ABC Permits. Reverend Mark Creech, representing the Christian Action League of North Carolina, spoke against the bill. Mr. T. Jerry Williams, representing the North Carolina Restaurant Association, spoke in favor of the bill. Mr. Hardy Lewis, attorney who represents people in the alcoholic beverage industry, also spoke in favor of the bill. Senator Robert Rucho moved a favorable report of the bill. The ayes and nays were inconclusive and a division was called, resulting in a 9-7 vote in favor of the motion.

Senator Soles introduced Representative Mitchell Setzer to explain HB 276, Insurance Financial Amendments Omnibus-AB. Senator Rand moved adoption of a proposed committee substitute. The motion carried. Mr. Frank Folger, Department of Insurance, was introduced to confirm the Department's support of the committee substitute. Senator R. B. Sloan moved an unfavorable report of the bill, but favorable report of the proposed committee substitute. The motion carried.

Senator Soles introduced Representative Hugh Holliman to explain HB 560, Disapprove Certain Life Insurance Rules. Mr. Folger explained the Department's reasons for requesting the bill. Senator John Kerr moved a favorable report of the bill. The motion carried.

Representative Holliman explained HB 829, Annuity Nonforfeiture Rate Change. Senator Phil Berger moved a favorable report of the bill. The motion carried.

Senator Soles introduced Representative Jeff Barnhart to explain HB 357, No Credit Card Number on Receipts. The bill was displaced while an amendment was prepared.

Senator Soles introduced Senator Berger to present HB 609, Enhance Elevator & Amusement Device Safety, for Representative Rex Baker. Senator Berger moved the adoption of an amendment. The motion carried. Ms. Barbara Jackson, attorney for the Department of Labor, answered questions about the bill and provided a handout with definitions used by the Department in overseeing amusements in the state. Senator Tony Moore moved a favorable report of the bill as amended and engrossed into a committee substitute. The motion carried.

Senator Patrick Ballantine moved adoption of an amendment to HB 357 (see above). The motion carried. Senator Ballantine moved a favorable report of the bill as amended and engrossed into a committee substitute. The motion carried.

There was no time to take up HB 892, Workers Comp./Interstate Carrier Drivers.

The meeting adjourned at 12:05 p.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

H

HOUSE BILL 1093

Short Title:	Technical Amendments/Insurance Guaranty Assoc.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Rules, Calendar, and Operations of the House.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE NORTH CAROLINA INSURANCE GUARANTY ASSOCIATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-48-20 reads as rewritten:

"**§ 58-48-20. Definitions.**

As used in this Article:

(1) "Account" means any one of the three accounts created by G.S. 58-48-25.

(1a) "Affiliate" means a person who directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year next preceding the date the insurer becomes an insolvent insurer.

(2) "Association" means the North Carolina Insurance Guaranty Association created under G.S. 58-48-25.

(2a) "Claimant" means any insured making a first party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.

(3) Repealed by Session Laws 1991, c. 720, s. 6.

(3a) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by ~~contract~~ contract, other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any

other person. This presumption may be rebutted by a showing that control does not exist in fact.

(4) "Covered claim" means an unpaid claim, including one of unearned premiums, which is in excess of fifty dollars ($50.00) and arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Article applies as issued by an insurer, if such insurer becomes an insolvent insurer after the effective date of this Article and (i) the claimant or insured is a resident of this State at the time of the insured event; or (ii) the property from which the claim arises is permanently located in this State. "Covered claim" shall not include any amount awarded (i) as punitive or exemplary damages; (ii) sought as a return of premium under any retrospective rating plan; or (iii) due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation or contribution recoveries or otherwise. "Covered claim" also shall not include fines or penalties, including attorneys fees, imposed against an insolvent insurer or its insured or claims of any claimant whose net worth exceeds fifty million dollars ($50,000,000) on December 31 of the year preceding the date the insurer becomes insolvent.

(5) "Insolvent insurer" means (i) an insurer licensed and authorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred and (ii) against whom an order of liquidation with a finding of insolvency has been entered after the effective date of this Article by a court of competent jurisdiction in the insurer's state of domicile or of this State under the provisions of Article 30 of this Chapter, and which order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order.

(6) "Member insurer" means any person who (i) writes any kind of insurance to which this Article applies under G.S. 58-48-10, including the exchange of reciprocal or interinsurance contracts, and (ii) is licensed and authorized to transact insurance in this State.

(7) "Net direct written premiums" means direct gross premiums written in this State on insurance policies to which this Article applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(7a) "Ocean marine insurance" includes (i) marine insurance as defined in G.S. 58-7-15(20)a., except for inland marine, (ii) marine protection and indemnity insurance as defined in G.S. 58-7-15(21), and (iii) any other form of insurance, regardless of the name, label, or marketing designation of the insurance policy, which insures against maritime perils or risks and other related perils or risks, which are usually insured by traditional marine insurance such as hull and machinery,

marine builders' risks, and marine protection and indemnity. The perils and risks insured against include loss, damage, or expense, or legal liability of the insured for loss, damage, or expense, arising out of, or incident to, ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, death, or for loss or damage to the property of the insured or another person. "Ocean marine insurance" does not include insurance on vessels or vehicles under five tons gross weight.

(8) "Person" means any individual, corporation, partnership, association or voluntary organization.

(9) "Policyholder" means the person to whom an insurance policy to which this Article applies was issued by an insurer which has become an insolvent insurer.

(10) "Resident" means:

a. An individual domiciled in this State;

b. An individual formerly domiciled in this State at the time the applicable policy was issued or renewed and the term of the policy had not expired at the time of the insured event, and who at the time of the insured event had complied with the laws of the current domicile necessary to allow maintenance in force and effect of the applicable policy; or

c. In the case of a corporation or other entity that is not a natural person, a corporation or entity whose principal place of business is located in this State at the time of the insured event."

SECTION 2. G.S. 58-48-50(a1) reads as rewritten:

"(a1) The Association shall have the right to recover from the following persons the amount of any "covered claim" paid and any and all expenses incurred, including attorneys' fees and costs of defense, ~~on behalf of such person~~ in connection with any claim against the person or the person's affiliate pursuant to this Article:

(1) Any insured whose net worth on December 31 of the year next preceding the date the insurer becomes insolvent exceeds fifty million dollars ($50,000,000) and whose liability obligations to other persons are satisfied in whole or in part by payments under this Article; or

(2) Any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this Article."

SECTION 3. G.S. 58-48-55(a) reads as rewritten:

"(a) Any person having a right to a defense or a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his rights under such policy. Any amount payable on a covered claim under this Article shall be reduced by the amount of any recovery under ~~such~~ that insurance policy. For purposes of this section, a claim under an insurance policy shall include a claim under or covered by any kind of

insurance, whether it is a first-party or a third-party claim, and whether it is a policy covering the policyholder or another person liable to the claimant, and shall include, without limitation, policies of accident and health insurance, workers' compensation insurance, medical expense coverage, and all other coverage except for policies of an insolvent insurer."

SECTION 4. G.S. 58-48-85 reads as rewritten:

"**§ 58-48-85. Stay of proceedings; reopening of default judgments.**

All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any ~~court~~ court or before any administrative agency or the North Carolina Industrial Commission ~~in this State~~ shall be stayed automatically for 120 days and such additional time thereafter as may be determined by the court from the date the insolvency is determined or any ancillary proceedings are initiated in this State, whichever is later, to permit proper defense by the Association of all pending causes of action. Any party to any proceeding which is stayed pursuant to this section shall have the right, upon application and notice, to seek a vacation or modification of such stay. Any covered claims arising from any judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend an insured, shall, upon application and notice by the Association be vacated and set aside by the same court in which such judgment, order, decision, verdict, or finding is entered and the Association either on its own behalf or on behalf of any insured or an insolvent insurer, shall be permitted to defend against such claim on the merits. Any party who has obtained any such judgment or order shall have the right, upon application and notice, to have the judgment or order restored if within 90 days following the entry of the judgment or order the Association has not notified such party and the court that it intends to defend the matter on the merits."

SECTION 5. This act becomes effective October 1, 2003.

HOUSE BILL 1093:
Technical Amendments/Insurance Guaranty Association

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	Representative Culpepper
Date:	May 27, 2003	**Summary by:**	Tim Hovis
Version:	House Bill 1093		Committee Counsel

The Insurance Guaranty Association is the statutory nonprofit association that pays covered claims when an insurer goes insolvent. House Bill 1093 makes technical and clarifying changes to the statutes governing the Association including the following:

Making it clear that fines or penalties, including attorneys fees, imposed against an insolvent insurer or its insured or claims of high-net worth companies are excluded from covered claims;

Defining "ocean marine insurance" to clarify the term;

Specifying that high-net worth companies have to pay back not only the amounts paid for the claims against them, but also the costs incurred in defending the claims;

Adding language to make it clear that the Association is the payor of last resort;

Clarifying that the stay of court proceedings under current law also applies to proceedings before the Industrial Commission and other administrative agencies.

For more information, please the attached summary.

During the mid-1960s sixty-five insurers writing sub-standard auto insurance became insolvent and failed to pay the claims of their insureds, or persons with claims against their insureds. In response, Congress introduced legislation to create a federal guaranty system for providing limited protection of policyholders and claimants in a manner similar to the protection afforded bank depositors by the Federal Deposit Insurance Corporation. The proposed Congressional response involved a pre-insolvency assessment mechanism similar to the FDIC.

The National Association of Insurance Commissioners ("NAIC") responded to the proposed federalization of the insurance insolvency process by developing model acts for insurer insolvency procedures, and for the creation of a post-insolvency assessment mechanism which became the state-by-state Guaranty Fund system. Today, post-assessment property & casualty guaranty funds operate in 49 states, the District of Columbia, Puerto Rico and the Virgin Islands. Only New York chose to adopt the pre-insolvency assessment method.

North Carolina adopted most of the model act in 1971, extending protection for auto, homeowners and similar personal lines. The Guaranty Act created the North Carolina Insurance Guaranty Association, and established it as a mechanism for the payment of statutory benefits for certain "covered claims". The Insurance Guaranty Association is not an insurer, and it pays only statutory benefits; it issues no policies, it collects no premiums, and its payments do not result from any voluntary business decisions.

After the insolvency of several commercial insurers during the mid-1980s rapidly increased the number of claims filed by large commercial businesses for many different types of claims, the personal lines and small commercial focus of the Guaranty Act was re-emphasized by the addition of several new provisions. The new provisions included limits on the duty to defend large out-of-state companies, as well as provisions that limited or extinguished such protection for companies with a large net worth. North Carolina adopted most of those changes.

As a result of the success of the Guaranty Fund system generally, in 1992 the General Assembly amended the Guaranty Act to include for the first time claims related to insolvent workers' compensation insurers who became insolvent after January, 1993. In the last two years there have been several major commercial insurers who have become insolvent, including three insurers who wrote significant amounts of commercial insurance and workers' compensation insurance for large companies. These more recent insurer failures have revealed some limited areas where the Guaranty Act needs to be revised.

The proposed technical amendments would accomplish the following:

(1) Most model acts exclude completely claims of companies with a high net worth, usually $25,000,000. North Carolina was more generous, adopting a $50,000,000 net worth threshold, and also allowing the payment of claims against such companies, but authorizing the North Carolina Insurance Guaranty Association to recover the amount paid for such claims from the high-net worth policyholder. Section 2 of the proposed bill would make clear that such high net-worth companies have to pay back not only the amounts paid for the claims against them, but also the costs incurred in defending such claims. In addition, Section 1 would revise the

definition of "covered claim" to bar such companies from filing claims directly for property damage or similar first-party coverage.

(2) The current version of North Carolina's Guaranty Act excludes from "covered claims" exemplary or punitive damages, and "ocean marine" insurance. Section 1 of the proposed legislation would clarify this language to make clear that fines or penalties, including attorneys' fees, imposed against the insolvent insurer or its insured likewise are excluded from treatment as a covered claim. The same section would also more clearly define "ocean marine" insurance to avoid disputes over the meaning of that exclusion.

(3) In order to maximize the amount of funds available to pay policyholders and claimants, the Guaranty Act presently requires a person with a claim against any solvent insurer to exhaust his rights against that insurer before filing a claim with the Guaranty Association, and also reduces the amount payable by the Guaranty Association by the amount recovered from the solvent insurer. Section 3 of the proposed legislation would make clear that the duty to exhaust rights against a solvent insurer that accepted the risk voluntarily and collected a premium would include the exhaustion of any defense obligations that may exist under any such policy. The same section would codify court decisions in North Carolina and other states that make clear that the Guaranty Funds are payers of last resort, by explicitly listing several types of other insurance policies that would have to be exhausted before a claim would become payable by the Guaranty Association.

(4) Finally, the Guaranty Act presently provides for a stay of ***court*** proceedings involving claims against an insured of an insolvent insurer for a period of 120 days, giving the Guaranty Association "breathing room" so that it can activate, identify and collect the claim files of the insolvent insurer needed to do its job, and arrange for the defense or settlement of the pending litigations. This normally takes several months. After the Guaranty Act in North Carolina was amended to include claims against insolvent workers' compensation insurers, the Industrial Commission adopted the policy of providing a similar stay to proceedings before it, but has been criticized for doing so. Section 4 of the proposed act would amend the current stay language to make it expressly apply to proceedings before the Industrial Commission and other administrative agencies, so that such claims will be treated the same as those pending before courts.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 864*

Committee Substitute Favorable 4/23/03

Short Title: Guaranteed Energy Savings Contract Efficiency. (Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT INCREASING THE EFFICIENCY OF GUARANTEED ENERGY SAVINGS CONTRACTS FOR STATE GOVERNMENTAL UNITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-64.17B reads as rewritten:

"**§ 143-64.17B. Guaranteed energy savings contracts.**

(a) A governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

(1) The term of the contract does not exceed 12 years from the date of the installation and acceptance by the governmental unit of the energy conservation measures provided for under the contract.

(2) The governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.

(3) The energy conservation measures to be installed under the contract are for an existing building.

...

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide ~~a bond to the governmental unit in the~~ security to the governmental unit in the form acceptable to the Office of the State Treasurer and in an amount equal to one hundred percent (100%) of the total cost of the guaranteed energy savings contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract and all required shortfall payments to the governmental unit have not been made, the governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

...

(f) In the case of a State governmental unit, a qualified provider shall, when feasible, after the acceptance of the proposal of the qualified provider by the State governmental unit, conduct an investment grade audit. If the results of the audit are not within ten percent (10%) of both the guaranteed savings contained in the proposal and the total proposal amount, either the State governmental unit or the qualified provider may terminate the project without incurring any additional obligation to the other party. However, if the State governmental unit terminates the project after the audit is conducted and the results of the audit are within ten percent (10%) of both the guaranteed savings contained in the proposal and the total proposal amount, the State governmental unit shall reimburse the qualified provider the reasonable cost incurred in conducting the audit, and the results of the audit shall become the property of the State governmental unit.

(g) In the case of a State governmental unit, a qualified provider shall provide an annual reconciliation statement based upon the results of the measurement and verification review. The statement shall disclose any shortfalls or surplus between guaranteed energy and operational savings specified in the guaranteed energy savings contract and actual, not stipulated, energy and operational savings incurred during a given guarantee year. The guarantee year shall consist of a 12-month term commencing from the time that the energy conservation measures become fully operational. A qualified provider shall pay the State governmental unit any shortfall in the guaranteed energy and operational savings after the total year savings have been determined. A surplus in any one year shall not be carried forward or applied to a shortfall in any other year."

SECTION 2. G.S. 143-64.17F reads as rewritten:

"**§ 143-64.17F. State agencies to use contracts when ~~feasible.~~feasible; rules; recommendations.**

(a) State governmental units shall evaluate the use of guaranteed energy savings contracts in reducing energy costs and may use those contracts when feasible and practical.

(b) The Department of Administration, through the State Energy Office, shall adopt rules ~~for~~ for: (i) agency evaluation of guaranteed energy savings ~~contracts.~~contracts; (ii) establishing time periods for consideration of guaranteed energy savings contracts by the Office of State Budget and Management, the Office of the State Treasurer, and the Council of State, and (iii) setting measurements and verification criteria, including review, audit, and precertification. Prior to adopting any rules pursuant to this section, the Department shall consult with and obtain approval of those rules from the State Treasurer.

(c) The Department of Administration, through the State Energy Office, may provide to the Council of State its recommendations concerning any energy savings contracts being considered."

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 864:
Guaranteed Energy Savings Contract Efficiency

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	Representatives Brubaker and Saunders
Date:	May 27, 2003		
Version:	House Bill 864-Second Edition	**Summary by:**	Tim Hovis Committee Counsel

SUMMARY: Section 1 of the bill would provide that, in the case of a state governmental unit, qualified providers of guaranteed energy savings contracts must conduct an investment grade audit. If the results of the audit are not within 10% of the guaranteed savings contained in the proposal, either the state governmental unit or the qualified provider may terminate the project. If the audit shows savings within 10% of the proposal and the state governmental unit terminates the proposal, the bill would require the state to reimburse the provider the reasonable costs of the audit.

The bill would also require qualified providers to provide an annual reconciliation statement demonstrating any shortfalls or surplus between specified energy savings and actual energy savings during a given guarantee year. The provider must reimburse the state governmental unit for any shortfall in actual savings for a given year.

Section 2 of the bill requires the Department of Administration to adopt rules establishing time periods for consideration of guaranteed energy savings contracts by the Office of State Budget and Management, the Office of State Treasurer, and the Council of State and setting measurements and verification criteria. The Department is also authorized to make recommendations to the Council of State concerning any energy savings contracts.

EFFECTIVE DATE: House Bill 864 would become effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 999
Second Edition Engrossed 4/30/03

Short Title:	Toner/Inkjet Cartridges.	(Public)
Sponsors:	Representatives Hackney, Sauls (Primary Sponsors); Insko and Lewis.	
Referred to:	Judiciary I.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT MAKING VOID AND UNENFORCEABLE AS A MATTER OF PUBLIC POLICY ANY PROVISION IN ANY AGREEMENT OR CONTRACT THAT PROHIBITS THE REUSING, REMANUFACTURING, OR REFILLING OF A TONER OR INKJET CARTRIDGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-36. Certain contracts relating to toner or inkjet cartridges void and unenforceable as a matter of public policy.**

Any provision in any agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge is void and unenforceable as a matter of public policy if the procurement of that agreement or contract violates the provisions of Article 1 of Chapter 75 of the General Statutes."

SECTION 2. This act is effective October 1, 2003, and applies to agreements or contracts entered into on or after that date. This act does not apply to or affect any litigation pending before that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 999
Second Edition Engrossed 4/30/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H999-CSSU-21 [v.1]

5/10/2003 11:08:24 AM

Short Title: Toner/Inkjet Cartridges. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT MAKING VOID AND UNENFORCEABLE AS A MATTER OF PUBLIC POLICY ANY PROVISION IN ANY AGREEMENT OR CONTRACT THAT PROHIBITS THE REUSING, REMANUFACTURING, OR REFILLING OF A TONER OR INKJET CARTRIDGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-36. Certain contracts relating to toner or inkjet cartridges void and unenforceable as a matter of public policy.**

Any provision in any agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge is void and unenforceable as a matter of public policy."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 999:
Toner/Inkjet Cartridges

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Representatives Hackney and Sauls
Date:	May 13, 2003		
Version:	Proposed Committee Substitute H999-CSSU-21[v.1]	**Summary by:**	Wendy Graf Ray Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 999 would make void any provision in a contract that prohibits reusing a toner or inkjet cartridge.***

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 999 would make any provision in an agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge void and unenforceable as a matter of public policy.

BACKGROUND: There are companies in North Carolina and throughout the country that recycle, remanufacture, or refill cartridges for printers. This process enables customers to replace cartridges, usually at a lower price, while reducing the amount of waste created by used cartridges.

The General Assembly has previously supported a policy of recycling toner cartridges by passing legislation directing the Department of Administration to require the purchase or use of remanufactured toner cartridges for laser printers to the extent practicable.

EFFECTIVE DATE: The act would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 900

Short Title:	Restaurant ABC Permits.	(Public)
Sponsors:	Representatives Gibson and McComas (Primary Sponsors).	
Referred to:	Alcoholic Beverage Control.	

April 7, 2003

A BILL TO BE ENTITLED

AN ACT MODIFYING THE DEFINITION OF "RESTAURANT" FOR ABC PERMITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-1000 reads as rewritten:

"**§ 18B-1000. Definitions concerning establishments.**

The following requirements and definitions shall apply to this Chapter:

...

(6) Restaurant. – An establishment substantially engaged in the business of preparing and serving meals. To qualify as a restaurant, an establishment's gross receipts from food and nonalcoholic beverages shall be not less than ~~forty percent (40%)~~ thirty percent (30%) of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages. A restaurant shall also have a kitchen and an inside dining area with seating for at least 36 people."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 900:
Restaurant ABC Permits

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Gibson and McComas
Date:	May 27, 2003	**Summary by:**	O. Walker Reagan,
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***House Bill 900 modifies the definition of "restaurant" for ABC permits by reducing the requirement for non-alcoholic beverages sales necessary to maintain the ABC permits from not less than 40% to not less than 30%.***

CURRENT LAW: One of the current requirements to qualify as a "restaurant" under the ABC permitting statutes is to have no less than 40% of the establishment's gross receipts derive from the sale of food and nonalcoholic beverages. Restaurants are also required to have a kitchen and an inside dining area with seating for at least 36 people. As a restaurant, the establishment is entitled to ABC permits for on and off premises malt beverages, on premises fortified and unfortified wine, brown bagging, special occasion permits, mixed beverages and culinary permits.

BILL ANALYSIS: House Bill 900 amends the definition of "restaurant" in G.S. 18B-1000 to reduce the percentage of gross receipts required from food and nonalcoholic beverages from 40% to 30%.

EFFECTIVE DATE: The bill would be effective when it becomes law.

This summary was substantially contributed to by Susan Sitze, Counsel to the House Alcoholic Beverage Control Committee.

H900-SMRU-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 276

Committee Substitute Favorable 4/14/03

Short Title: Insurance Financial Amendments Omnibus.-AB (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE AND TECHNICAL AMENDMENTS IN THE LAWS CONCERNING INSURANCE COMPANY SOLVENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-5-5 reads as rewritten:

"**§ 58-5-5. Amount of deposits required of foreign or alien fire and/or marine insurance companies.**

Unless otherwise provided in this Article, every fire, marine, or fire and marine insurance company chartered by any other state or foreign government shall make and maintain deposits of securities with the Commissioner in the amount of ~~twenty-five thousand dollars ($25,000)~~ one hundred thousand dollars ($100,000) market value."

SECTION 2. G.S. 58-5-10 reads as rewritten:

"**§ 58-5-10. Amount of deposits required of foreign or alien fidelity, surety and casualty insurance companies.**

Unless otherwise provided in this Article, every fidelity, surety or casualty insurance company chartered by any other state or foreign government shall make and maintain deposits of securities with the Commissioner in the amount of ~~fifty thousand dollars ($50,000)~~ two hundred thousand dollars ($200,000) market value."

SECTION 3. G.S. 58-5-50 reads as rewritten:

"**§ 58-5-50. Deposits of foreign life insurance companies.**

In addition to other requirements of Articles 1 through 64 of this Chapter, all foreign life insurance companies shall deposit securities, as specified in G.S. 58-5-20, having a market value of ~~one hundred thousand dollars ($100,000)~~ four hundred thousand dollars ($400,000) as a prerequisite of doing business in this State. All foreign life insurance companies shall deposit an additional ~~one hundred thousand dollars ($100,000)~~ two hundred thousand dollars ($200,000) where such companies cannot show three years of net operational gains prior to admission. Foreign life insurance companies that are licensed on or before the effective date of this section shall have one year from that date to comply with this section."

SECTION 4. G.S. 58-7-162(2) reads as rewritten:

"(2) Investments, securities, properties, and loans acquired or held in accordance with this ~~Chapter, and in connection therewith the following items:~~

~~a. Interest due or accrued on any bond or evidence of indebtedness that is not in default.~~

~~b. Declared and unpaid dividends on stock and shares, unless that amount has otherwise been allowed as an asset.~~

~~c. Interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon.~~

~~d. Interest due or accrued on deposits in solvent banks, savings and loan associations, and trust companies, and interest due or accrued on other assets, if the interest is, in the Commissioner's judgment, a collectible asset.~~

~~e. Interest due or accrued on a current mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of 90 days be allowed as an asset.~~

~~f. Rent due or accrued on real property if the rent is not in arrears for more than three months, and rent more than three months in arrears if the payment of the rent is adequately secured by property held in the tenant's name and conveyed to the insurer as collateral and the underlying collateral is admissible under this Chapter.~~

~~g. The unaccrued portion of taxes paid before the due date on real property.~~

Chapter."

SECTION 5. G.S. 58-7-162(5) and G.S. 58-7-162(7) are repealed.

SECTION 6. G.S. 58-7-162(12) reads as rewritten:

"(12) Electronic and mechanical machines, including operating and system software constituting a management information ~~system, if the cost of the system is at least twenty-five thousand dollars ($25,000) but not more than two percent (2%) of total admitted assets; the cost shall be amortized in full over a period not to exceed seven calendar years.~~system."

SECTION 7. G.S. 58-7-163 reads as rewritten:

"**§ 58-7-163. Assets not allowed.**

In addition to assets impliedly excluded by the provisions of G.S. 58-7-162, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

~~(1) Goodwill, trade names, and other like intangible assets.~~

(2) Advances (other than policy loans) to officers, directors, and controlling stockholders, whether secured or not, and advances to employees, agents, and other persons on personal security only.

(3) Stock of the insurer or any material equity therein or loans secured thereby, or any material proportionate interest in the stock acquired or held through the ownership by the insurer of an interest in another firm, corporation, or business unit.

~~(4) Furniture, fixtures, other equipment, safes, vehicles, libraries, stationery, literature, and supplies, other than data processing and accounting systems authorized under G.S. 58-7-162(12), except in the case of title insurers the materials and plants which G.S. 58-7-182 expressly authorizes the insurer to invest in, and except, in the case of any insurer, any personal property that the insurer is permitted to hold under this Chapter, or that is acquired through foreclosure of chattel mortgages acquired under G.S. 58-7-180, or that is reasonably necessary for the maintenance and operation of real estate that the insurer uses for a home office, branch office, and similar purposes.~~

(5) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value of the investments as determined under this Chapter.

(6) Bonds, notes, or other evidences of indebtedness that are secured by mortgages or deeds of trust that are in default, to the extent of the cost or carrying value that is in excess of the value as determined pursuant to other provisions of this Chapter.

~~(7) Prepaid and deferred expenses.~~

(8) Certificates of ~~contribution~~ contribution, surplus notes, or other similar evidences of ~~indebtedness.~~ indebtedness, to the extent that admission of these investments results in the double counting of these investments in the reporting entity's balance sheet.

(9) Any asset that is encumbered in any manner unless the asset is authorized under G.S. 58-7-187 or G.S. 58-7-162(13)."

SECTION 8. G.S. 58-7-192 reads as rewritten:

"**§ 58-7-192. Valuation of securities and investments.**

~~(a) All securities, investments, and evidences of debt, other than those for which valuation methodologies are specifically set forth in this Chapter, that are held by an insurer shall be valued at their market values, at their appraised values, or at prices determined by the insurer as representing their fair market values, subject to the Commissioner's approval.~~

~~(b) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, in the Commissioner's discretion and in accordance with a method of valuation that the Commissioner approves.~~

~~(c) Stock of a subsidiary corporation of an insurer shall not be valued at an amount in excess of its net value as based upon those assets only of the subsidiary that~~

~~would be eligible under this Chapter and G.S. 58-19-10 for investment of the funds of the insurer direct.~~

(d) No valuations ~~under this section~~ shall be greater than any applicable valuation or method contained in the latest edition of the NAIC publications entitled ~~"Valuations of Securities"~~"Purposes and Procedures Manual of the NAIC Securities Valuation Office" or the "Accounting Practices and Procedures Manual", unless the Commissioner determines that another valuation method is appropriate when it results in a more conservative valuation.

~~(e) All bonds or fully secured indebtedness having a stated term and a rate of interest that are held by an insurer shall be valued in accordance with the procedures and instructions contained in the NAIC publication entitled "Valuations of Securities", unless the Commissioner determines that a more conservative valuation is appropriate.~~"

SECTION 9. G.S. 58-7-193 reads as rewritten:

"**§ 58-7-193. Valuation of property.**

~~(a) Real property acquired pursuant to a mortgage loan or contract for sale shall be valued at the net realizable value, but in no event shall the property be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of the acquisition and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.~~

~~(b) Other real property held by an insurer shall not be valued at an amount in excess of fair market value as determined by recent appraisal and as approved by the Commissioner. If valuation is based on an appraisal more than three years old, the Commissioner may call for and require a new appraisal in order to determine fair value.~~

(c) Personal property acquired pursuant to chattel mortgages made in accordance with G.S. 58-7-180 shall not be valued at an amount greater than the unpaid balance of principal on the defaulted loan at the date of acquisition, or the fair market value of the property, whichever amount is less.

(d) If the Commissioner and an insurer do not agree on the value of real or personal property of an insurer, in carrying out the Commissioner's responsibilities under this section, the Commissioner may retain the services of a qualified real or personal property appraiser. The insurer shall reimburse the Commissioner for the costs of the services of any appraiser incurred with respect to the Commissioner's responsibilities under this section."

SECTION 10. G.S. 58-7-195 is repealed.

SECTION 11. G.S. 58-7-179(d) reads as rewritten:

"(d) In the case of a purchase money mortgage given to secure the purchase price of real estate sold by the insurer, the amount lent or invested shall not exceed the unpaid part of the purchase ~~price and shall be valued in accordance with G.S. 58-7-195.~~price."

SECTION 12. G.S. 58-23-26(c) reads as rewritten:

"(c) Each pool is subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-75, 58-3-81, 58-3-105, 58-6-5, 58-7-21, 58-7-26, 58-7-30, 58-7-31, 58-7-50, 58-7-55, 58-7-140, 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168,

58-7-170, 58-7-172, 58-7-173, 58-7-175, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, ~~58-7-195,~~ 58-7-197, 58-7-200, and Articles 13, 19, and 34 of this Chapter. Annual financial statements required by G.S. 58-2-165 shall be filed by each pool within 60 days after the end of the pool's fiscal year, subject to extension by the Commissioner."

SECTION 13. G.S. 58-47-80 reads as rewritten:

"**§ 58-47-80. Assets and invested assets.**

Funds shall be held and invested by the board under G.S. 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, ~~58-7-195,~~ 58-7-197, 58-7-200, and 58-19-10."

SECTION 14. G.S. 58-8-15 reads as rewritten:

"**§ 58-8-15. Directors in mutual companies.**

Every mutual insurance company shall elect by ballot a board of not less than seven directors, who shall manage and conduct its business and hold office for one year or for such term as the bylaws provide and until their successors are qualified. The directors need not be residents of this State or members of the company. In companies with a guaranty capital, no more than ~~one half~~ one-half of the directors shall be ~~chosen~~ elected by ~~and from~~ the ~~stockholders.~~holders of guaranty capital, except where guaranty capital holders are policyholders. Policyholders which are holders of guaranty capital shall be entitled to one vote for each policy that person holds and one vote for each unit of guaranty capital that person holds."

SECTION 15. G.S. 58-8-20 reads as rewritten:

"**§ 58-8-20. Mutual companies with a guaranty capital.**

(a) A mutual insurance company formed as provided in Articles 1 through 64 of this Chapter, in lieu of the contributed surplus required for the organization of mutual companies under the provisions of G.S. 58-7-75, or a mutual insurance company now existing, may, with the prior approval of the Commissioner, ~~establish~~ tender a guaranty capital offering of not less than fifty thousand dollars ($50,000), divided into ~~shares~~ units of one hundred dollars ($100.00) each, which shall be invested in the same manner as is provided in this Chapter for the investment of the capital stock of insurance companies.

(a1) Guaranty capital may be issued by an existing domestic mutual insurance company only under the following terms and conditions:

(1) To aid and assist a financially troubled domestic mutual insurance company which otherwise faces rehabilitation or liquidation by this Department; or

(2) For any other reason as presented in a petition to the Commissioner and which is found by the Commissioner to be reasonable, justifiable, and in the best interest of all the policyholders of the company.

Guaranty capital issued under subdivision (2) of this subsection shall require written notification of the action proposed by the board of directors of the company to be mailed to the policyholders of the company not less than 30 days before the meeting when the action may be taken. The written notification shall be advertised in two

newspapers of general circulation, approved by the Commissioner, not less than three times a week for a period of not less than four weeks before the meeting. The written notification to policyholders shall include a proxy statement to allow policyholders to vote on the proposed action without personal attendance at the meeting, and the Commissioner shall approve both the written notification and the proxy statement. The proposed action shall be effected by a vote of two-thirds of the policyholders voting thereon in person or by proxy.

(b) The board of directors of a company may ~~declare and pay dividends to the stockholders of the guaranty capital of a company, subject to the notification requirements of G.S. 58-19-25(d) and the prior approval requirements of G.S. 58-19-30(c).~~ distribute interest to the holders of guaranty capital in accordance with the guaranty capital filing approved by the Department.

(c) ~~The guaranty~~ Guaranty capital shall be applied to the payment of losses only when the company has exhausted its cash in hand and the invested assets, exclusive of uncollected premiums, and when thus impaired, the directors may make good the whole or any part of it by assessments upon the contingent funds of the company at the date of such impairment. ~~In the event of a merger, demutualization, or other event where the entity ceases to exist, guaranty capital shall only be returned or repaid to the certificate holders to the extent that the guaranty capital had been contributed together with accrued income as specified in the certificate. Any amounts in excess shall be for the benefit of the policyholders.~~

(d) ~~Shareholders and members of such companies are subject to the same provisions of law in respect to their right to vote as apply respectively to shareholders in stock companies and policyholders in mutual companies.~~ Guaranty capital holders are entitled to one vote per unit of guaranty capital. Guaranty capital holders who are not policyholders are not entitled to participate in the policyholder votes prescribed under subdivision (a1)(2) and subsection (e) of this section.

(e) ~~This guaranty~~ Guaranty capital may be reduced or retired by vote of the policyholders of the company and the assent of the Commissioner, if the net assets of the company above its reserve and all other claims and obligations, exclusive of guaranty capital, for two years immediately preceding and including the date of its last annual statement, is not less than twenty-five percent (25%) of the guaranty capital. Due notice of such proposed action on the part of the company must be mailed to each policyholder of the company not less than 30 days before the meeting when the action may be taken, and must also be advertised in two papers of general circulation, approved by the Commissioner, not less than three times a week for a period of not less than four weeks before such meeting. ~~No insurance company with a guaranty capital which has ceased to do new business, shall divide to its stockholders any part of its assets or guaranty capital, except income from investments, until it has performed or canceled its policy obligations. In the event of a merger, demutualization, or other event where the entity ceases to exist, guaranty capital shall only be returned or repaid to the certificate holders to the extent that the guaranty capital had been contributed together with accrued income as specified in the certificate. Any amounts in excess shall be for the benefit of the policyholders.~~

(f) No insurance company with guaranty capital shall distribute to its holders of guaranty capital its assets, except as provided in the guaranty capital filing as approved by the Commissioner.

(g) In the event of a merger, demutualization, or other event where the entity ceases to exist, guaranty capital shall only be returned or repaid to the holders of guaranty capital to the extent that the guaranty capital has been contributed together with accrued interest as specified in the filing approved by the Commissioner."

SECTION 16. G.S. 58-8-50 reads as rewritten:

"**§ 58-8-50. Guaranty against assessments prohibited.**

If any director, officer, or agent of a mutual insurance company, either officially or privately, ~~shall give~~ gives a guarantee to a policyholder ~~thereof~~ of the company against an assessment to which ~~such~~ that policyholder would otherwise be liable, ~~he~~ the director, officer, or agent shall be punished by a fine not exceeding ~~one hundred dollars ($100.00)~~ one thousand dollars ($1,000) for each offense."

SECTION 17. G.S. 58-65-1 reads as rewritten:

"**§ 58-65-1. Regulation and definitions; application of other laws; profit and foreign corporations prohibited.**

(a) Any corporation organized under the general corporation laws of the State of North Carolina for the purpose of maintaining and operating a nonprofit hospital or medical or dental service plan whereby hospital care or medical or dental service may be provided in whole or in part by the corporation or by hospitals, physicians, or dentists participating in the plan, or plans, shall be governed by this Article and Article 66 of this Chapter and shall be exempt from all other provisions of the insurance laws of this State, unless otherwise provided.

The term "hospital service plan" as used in this Article ~~and Article 66 of this Chapter~~ includes the contracting for certain fees for, or furnishing of, hospital care, laboratory facilities, X-ray facilities, drugs, appliances, anesthesia, nursing care, operating and obstetrical equipment, accommodations or any other services authorized or permitted to be furnished by a hospital under the laws of the State of North Carolina and approved by the North Carolina Hospital Association or the American Medical Association.

The term "medical service plan" as used in this Article ~~and Article 66 of this Chapter~~ includes the contracting for the payment of fees toward, or furnishing of, medical, obstetrical, surgical or any other professional services authorized or permitted to be furnished by a duly licensed physician or other provider listed in G.S. 58-50-30. The term "medical services plan" also includes the contracting for the payment of fees toward, or furnishing of, professional medical services authorized or permitted to be furnished by a duly licensed provider of health services licensed under Chapter 90 of the General Statutes.

The term "dental service plan" as used in this Article ~~and Article 66 of this Chapter~~ includes contracting for the payment ~~2of~~ of fees toward, or furnishing of dental or any other professional services authorized or permitted to be furnished by a duly licensed dentist.

The term "hospital service corporation" as used in this Article ~~and Article 66 of this Chapter~~ is intended to mean any nonprofit corporation operating a hospital or medical

or dental service plan, as defined in this section. Any corporation organized and subject to the provisions of this ~~Article and Article 66 of this Chapter,~~ Article, the certificate of incorporation of which authorizes the operation of either a hospital or medical or dental service plan, or any or all of them, may, with the approval of the ~~Commissioner of Insurance,~~ Commissioner, issue subscribers' contracts or certificates approved by the Commissioner of Insurance, for the payment of either hospital or medical or dental fees, or the furnishing of such services, or any or all of them, and may enter into contracts with hospitals for physicians or dentists, or any or all of them, for the furnishing of fees or services respectively under a hospital or medical or dental service plan, or any or all of them.

The term "preferred provider" as used in this Article ~~and Article 66 of this Chapter~~ with respect to contracts, organizations, policies or otherwise means a health care service provider who has agreed to accept, from a corporation organized for the purposes authorized by this Article ~~and Article 66 of this Chapter~~ or other applicable law, special reimbursement terms in exchange for providing services to beneficiaries of a plan administered pursuant to this ~~Article and Article 66 of this Chapter.~~ Article. Except to the extent prohibited either by G.S. 58-65-140 or by rules ~~promulgated~~ adopted by the ~~Department of Insurance~~ Commissioner not inconsistent with this ~~Article and Article 66 of this Chapter,~~ Article, the contractual terms and conditions for special reimbursement shall be those which the corporation and preferred provider find to be mutually agreeable.

~~licensed licensed~~

(b) through (c) Repealed by Session Laws 2001-297.

~~licensed licensed Social Work and Licensure~~

(d) No foreign or alien hospital or medical or dental service corporation as herein defined shall be authorized to do business in this State."

SECTION 18. G.S. 58-65-95(a) reads as rewritten:

"(a) ~~No corporation~~ Corporations subject to this Article shall invest in ~~any securities other than securities~~ or hold only those assets permitted by Article 7 of this Chapter for ~~the investment of assets of~~ life and health insurance companies."

SECTION 19. G.S. 58-67-5(i) reads as rewritten:

"(i) "Net worth" means the excess of total assets over the total liabilities and may include borrowed funds that are repayable only from the net earned income of the health maintenance organization and repayable only with the advance permission of the Commissioner. For the purposes of this subsection, "assets" means (i) tangible assets and (ii) other investments permitted under ~~G.S. 58-67-60; provided, however, that the depreciated cost of office furniture and equipment in the principal office shall not exceed ten percent (10%) of a health maintenance organization's net worth.~~ G.S. 58-67-60."

SECTION 20. G.S. 58-67-40 is repealed.

SECTION 21. G.S. 58-67-110 reads as rewritten:

"**§ 58-67-110. Protection against insolvency.**

(a) The Commissioner shall require deposits in accordance with the provisions of G.S. 58-67-25.

(b) Each full service ~~medical~~ health maintenance organization shall maintain a minimum net worth ~~of not less than one million dollars ($1,000,000), which shall be increased by the amount of the contingency reserves calculated annually in accordance with the provisions of G.S. 58-67-40. The net worth calculation shall be computed in accordance with statutory accounting principles generally recognized in the regulation of health maintenance organizations and the Commissioner may promulgate such regulations as he deems appropriate to carry out the provisions of this section. If a health maintenance organization fails to comply with the net worth requirement of this subsection or subsections (c) or (d) of this section, the Commissioner is authorized to take appropriate action to assure that the continued operation of the health maintenance organization will not be hazardous to its enrollees.~~ equal to the greater of one million dollars ($1,000,000) or the amount required pursuant to the risk-based capital provisions of Article 12 of this Chapter. Each single service health maintenance organization shall maintain a minimum net worth equal to the greater of fifty thousand dollars ($50,000) or that amount required pursuant to the risk-based capital provisions of Article 12 of this Chapter.

~~(c) The minimum net worth for a health maintenance organization authorized to operate on July 17, 1987, and having a net worth of less than one million dollars ($1,000,000) shall be as follows:~~

~~(1) $150,000 by December 31, 1987~~
~~(2) $300,000 by December 31, 1988~~
~~(3) $450,000 by December 31, 1989~~
~~(4) $750,000 by December 31, 1990~~
~~(5) $1,000,000 by December 31, 1991~~

~~The net worth amounts required by this section shall be in addition to the contingency reserves required by G.S. 58-67-40.~~

~~(d) Notwithstanding any other provision of this Article, a health maintenance organization authorized to offer only a single health care service plan providing a single health care service must have a minimum net worth of fifty thousand dollars ($50,000). The minimum net worth for such plan authorized to operate on July 17, 1987, and having a net worth of less than fifty thousand dollars ($50,000) shall be as follows:~~

~~(1) Twenty-five thousand dollars ($25,000) by December 31, 1987; and~~
~~(2) Fifty thousand dollars ($50,000) by December 31, 1988;~~

~~The net worth amounts required by this section shall be in addition to the contingency reserves required by G.S. 58-67-40.~~

(e) Every full service medical health maintenance organization shall have and maintain at all times an adequate plan for protection against insolvency acceptable to the Commissioner. In determining the adequacy of such a plan, the Commissioner may consider:

(1) A reinsurance agreement preapproved by the Commissioner covering excess loss, stop loss, or catastrophes. The agreement must provide that the Commissioner will be notified no less than 60 days prior to cancellation or reduction of coverage.

(2) A conversion policy or policies that will be offered by an insurer to the enrollees in the event of the health maintenance organization's insolvency.

(3) Any other arrangements offering protection against insolvency that the Commissioner may require."

SECTION 22. G.S. 58-67-140(a)(3) reads as rewritten:

"(3) ~~No longer maintains the financial reserve specified in G.S. 58-67-40 or is~~ Is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees."

SECTION 23. G.S. 58-67-140(a)(7) reads as rewritten:

"(7) Has knowingly published or made to the Department or to the public any false statement or report, including any report or any data that serves as the basis for any report, required to be submitted under ~~G.S. 58-3-210.~~G.S. 58-3-191."

SECTION 24. G.S. 58-47-65(a) reads as rewritten:

"(a) No group shall self-insure its workers' compensation liabilities under the Act unless it is licensed by the Commissioner under this Part. This subsection does not apply to a group that was organized and approved under the North Carolina law before July 1, 1995, and whose authority to self-insure its workers' compensation liabilities under the Act has not terminated after that date."

SECTION 25. G.S. 97-170(a) reads as rewritten:

"(a) No employer shall self-insure its workers' compensation liabilities under the Act unless it is licensed by the Commissioner under this Article. This subsection does not apply to an employer authorized to self-insure its workers' compensation liabilities under the Act prior to December 1, 1997, whose authority to self-insure its workers' compensation liabilities under the Act has not terminated after that date."

SECTION 26.(a) G.S. 58-3-100 reads as rewritten:

"**§ 58-3-100. Insurance company licensing provisions.**

(a) The Commissioner may, after notice and opportunity for a hearing, revoke, suspend, ~~restrict, or refuse to renew~~ or restrict the license of any insurer if:

(1) The insurer fails or refuses to comply with any law, order or rule applicable to the insurer.

(2) The insurer's financial condition is unsound, or its assets above its liabilities, exclusive of capital, are less than the amount of its capital or required minimum surplus.

(3) The insurer has published or made to the Department or to the public any false statement or report.

(4) The insurer or any of the insurer's officers, directors, employees, or other representatives refuse to submit to any examination authorized by law or refuse to perform any legal obligation in relation to an examination.

(5) The insurer is found to make a practice of unduly engaging in litigation or of delaying the investigation of claims or the adjustment or payment of valid claims.

(b) Any suspension, revocation or refusal to renew suspension or revocation of an insurer's license under this section may also be made applicable to the license or registration of any individual regulated under this Chapter who is a party to any of the causes for licensing sanctions listed in subsection (a) of this section."

SECTION 26.(b) G.S. 58-4-15 reads as rewritten:

"**§ 58-4-15. Revocation or suspension of license.**

The Commissioner may ~~suspend, revoke, or refuse to renew~~ suspend or revoke the license of any insurer failing to file its financial statement when due or within any extension of time that the Commissioner, for good cause, may have granted."

SECTION 26.(c) G.S. 58-6-7 reads as rewritten:

"**§ 58-6-7. Licenses; perpetual licensing; annual license continuation ~~Annual license~~ fees for insurance companies.**

(a) In order to do business in this State, an insurance company shall apply for and obtain a license from the ~~Commissioner by March 1 of each year.~~ Commissioner. The license shall be perpetual and ~~become effective the following July 1 and shall remain in effect for one year.~~ shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with this Chapter and subject to any other applicable provision of the insurance laws of this State. Except as provided in subsection (b) of this section, the insurance company shall pay ~~an annual~~ a fee for each year the license is in effect, as follows:

For each domestic farmer's mutual assessment fire insurance company.....$ 25.00
For each fraternal order.....100.00
For each of all other insurance companies, except mutual burial associations taxed under G.S. 105-121.1.....1,000.00
The fees levied in this subsection are in addition to those specified in G.S. 58-6-5.

(b) When the paid-in capital stock or surplus, or both, of an insurance company, other than a farmer's mutual assessment company or a fraternal order, does not exceed one hundred thousand dollars ($100,000), the fee levied in this section shall be one-half the amount specified.

(c) Upon payment of the fee specified above and the fees and taxes elsewhere specified each insurance company, exchange, bureau, or agency, shall be entitled to do the types of business specified in Chapter 58, of the General Statutes of North Carolina as amended, to the extent authorized therein, except that: Insurance companies authorized to do either the types of business specified for (i) life insurance companies, or (ii) for fire and marine companies, or (iii) for casualty and fidelity and surety companies, in G.S. 58-7-75, which shall also do the types of business authorized in one or both of the other of the above classifications shall in addition to the fees above specified pay one hundred dollars ($100.00) for each such additional classification of business done. All fees and charges collected by the Commissioner under this Chapter are nonrefundable.

(d) Any rating bureau established by action of the General Assembly of North Carolina shall be exempt from the fees in this section."

SECTION 26.(d) G.S. 58-6-15 reads as rewritten:

"**§ 58-6-15. ~~Licenses run from July 1.~~ Annual license continuation fee definition; requirements.**

~~The license required of insurance companies shall continue, continue for the next ensuing 12 months after July 1 of each year, unless revoked as provided in Articles 1 through 64 of this Chapter. Application for renewal of the company license~~ For purposes of this Chapter only, "annual license continuation fee means" the fee specified in G.S. 58-6-7 submitted to the Commissioner for each year the license is in effect after the company's year of initial licensing. The annual license continuation fee must be submitted on or before the first day of March on a form to be supplied by the ~~Commissioner.~~ Commissioner each year the license is to remain in effect. If the Commissioner is satisfied ~~Upon satisfying himself~~ that the company has met all requirements of law and appears to be financially ~~solvent he shall forward the renewal license to the company. Any company which does not qualify for a renewal license before July 1 shall cease to do business in the State of North Carolina as of July 1, unless its license is sooner revoked by the Commissioner.~~ solvent, the Commissioner shall not revoke or suspend the license of the company, and the company shall be authorized to do business in this State, subject to all other applicable provisions of the insurance laws of this State. Nothing contained in this section shall be interpreted as applying to licenses issued to individual representatives of insurance companies."

SECTION 26.(e) G.S. 58-6-30 reads as rewritten:

"**§ 58-15-30. License, surplus, and deposit requirements.**

(a) No reciprocal shall engage in any insurance transaction in this State until it has obtained a license to do so in accordance with the applicable provisions of Articles 1 through 64 of this Chapter. ~~Such~~The license shall continue in full force and effect, subject to timely payment of an annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State.~~expire on the last day of June of each year.~~

(b) No domestic or foreign reciprocal shall be licensed in this State unless it has a surplus to policyholders of at least eight hundred thousand dollars ($800,000); and no alien reciprocal shall be licensed unless it has a trusteed surplus of at least eight hundred thousand dollars ($800,000).

(c) Each domestic, foreign, or alien reciprocal licensed in this State must maintain a minimum deposit with the Commissioner of at least one hundred thousand dollars ($100,000) in cash or in value of securities of the kind specified in G.S. 58-5-15, which shall be subject to the same conditions as contained in Article 5 of this Chapter."

SECTION 26.(f) G.S. 58-19-65 reads as rewritten:

"**§ 58-19-65. ~~Revocation, suspension, or nonrenewal~~ Revocation or suspension of insurer's license.**

Whenever it appears to the Commissioner that any person has committed a violation of this Article that makes the continued operation of an insurer contrary to the interests of policyholders or the public, the Commissioner may, after giving notice and an

opportunity to be heard, ~~suspend, revoke, or refuse to renew~~ suspend or revoke such insurer's license to do business in this State for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law."

SECTION 26.(g) G.S. 58-24-130 reads as rewritten:

"**§ 58-24-130. ~~Annual~~ Perpetual license.**

~~Societies which are now authorized to transact business in this State may continue such business until the 30th day of June next succeeding January 1, 1988. The authority of such societies and all societies hereafter licensed, may thereafter be renewed annually, but in all cases to terminate on the 30th day of the succeeding June. However, a license so issued~~ Subject to timely payment of the annual license continuation fee and subject to any other applicable provisions of the insurance laws of this State, a license, other than a preliminary license, to a fraternal benefit society under this Article shall continue in full force and ~~effect until the new license be issued or specifically refused.~~ effect. For each ~~such~~ license ~~or renewal~~ the society shall pay the Commissioner the fee specified in G.S. 58-6-5. The society shall pay the Commissioner, as an annual license continuation fee and a condition of the continuation of the license, the fee specified in G.S. 58-6-7 on or before the first day of March on a form to be supplied by the Commissioner. A duly certified copy or duplicate of ~~such~~the license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of Articles 1 through 64 of this Chapter."

SECTION 26.(h) G.S. 58-26-10 reads as rewritten:

"**§ 58-26-10. Financial statements and licenses required.**

Title insurance companies are subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-165, 58-2-180, and 58-6-5. The Commissioner may require title insurance companies to separately report their experience in insuring titles and in insuring closing services. The license to do business in this State issued to a title insurance company shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State. The Commissioner shall annually license ~~such companies and their agents.~~ the agents of title insurance companies."

SECTION 26.(i) G.S. 58-30-62 reads as rewritten:

"**§ 58-30-62. Administrative supervision of insurers.**

(a) As used in this section, an insurer has "exceeded its powers" when it: has refused to permit examination of its books, papers, accounts, records or affairs by the Commissioner; has in violation of G.S. 58-7-50 removed from this State books, papers, accounts or records necessary for an examination of the insurer; has failed to comply promptly with applicable financial reporting statutes or rules and related Department requests; continues to transact the business of insurance after its license has been ~~revoked, suspended, or not renewed~~ revoked or suspended by the Commissioner; by contract or otherwise, has unlawfully, or has in violation of an order of the Commissioner, or has without first having obtained any legally required written approval of the Commissioner, totally reinsured its entire outstanding business or

merged or consolidated substantially its entire property or business with another insurer; has engaged in any transaction in which it is not authorized to engage under the laws of this State; has not complied with G.S. 58-7-73; or has refused to comply with a lawful order of the Commissioner. As used in this section, "Commissioner" includes an authorized representative or designee of the Commissioner."

SECTION 26.(j) G.S. 58-65-55 reads as rewritten:

"**§ 58-65-55. Issuance ~~of certificate.~~ and continuation of license.**

(a) Before issuing or continuing any such license or certificate the Commissioner may make such an examination or investigation as the Commissioner deems expedient. The Commissioner shall issue a ~~certificate of authority or~~ license upon the payment of ~~an annual~~ a fee of one thousand dollars ($1,000) and upon being satisfied on the following points:

(1) The applicant is established as a bona fide nonprofit hospital service corporation as defined by this Article and Article 66 of this Chapter.

(2) The rates charged and benefits to be provided are fair and reasonable.

(3) The amounts provided as working capital of the corporation are repayable only out of earned income in excess of amounts paid and payable for operating expenses and hospital and medical and/or dental expenses and such reserve as the Department deems adequate, as provided hereinafter.

(4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the certificate.

(b) The license shall continue in full force and effect, subject to payment of an annual license continuation fee of one thousand dollars ($1,000), subject to all other provisions of subsection (a) of this section and subject to any other applicable provisions of the insurance laws of this State."

SECTION 26.(k) G.S. 58-65-125 reads as rewritten:

"**§ 58-65-125. ~~Revocation, suspension, and refusal to renew~~ Revocation and suspension of license; unfair trade practices.**

(a) The Commissioner may ~~revoke, suspend, or refuse to renew~~revoke or suspend the license of any service corporation if:

(1) The service corporation fails or refuses to comply with any law, order, or rule applicable to the service corporation.

(2) The service corporation's financial condition is unsound.

(3) The service corporation has published or made to the Department or to the public any false statement or report.

(4) The service corporation refuses to submit to any examination authorized by law.

(5) The service corporation is found to make a practice of unduly engaging in litigation or of delaying the investigation of claims or the adjustment or payment of valid claims.

(b) Any ~~suspension, revocation, or refusal to renew~~ suspension or revocation of a service corporation's license under this section may also be made applicable to the license or registration of any natural person regulated under this Chapter who is a party to any of the causes for licensing sanctions listed in subsection (a) of this section.

(c) Article 63 of this Chapter applies to service corporations and their agents and representatives."

SECTION 26.(l) G.S. 58-67-140 reads as rewritten:

"**§ 58-67-140. Suspension or revocation of license.**

(a) The Commissioner may ~~suspend, revoke, or refuse to renew~~ suspend or revoke an HMO license if the Commissioner finds that the HMO:

(1) Is operating significantly in contravention of its basic organizational document, or in a manner contrary to that described in and reasonably inferred from any other information submitted under G.S. 58-67-10, unless amendments to such submissions have been filed with and approved by the Commissioner.

(2) Issues evidences of coverage or uses a schedule of premiums for health care services that do not comply with G.S. 58-67-50.

(3) No longer maintains the financial reserve specified in G.S. 58-67-40 or is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.

(4) Has itself or through any person on its behalf advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner.

(5) Is operating in a manner that would be hazardous to its enrollees.

(6) Knowingly or repeatedly fails or refuses to comply with any law or rule applicable to the HMO or with any order issued by the Commissioner after notice and opportunity for a hearing.

(7) Has knowingly published or made to the Department or to the public any false statement or report, including any report or any data that serves as the basis for any report, required to be submitted under G.S. 58-3-210."

SECTION 26.(m) G.S. 58-67-160 reads as rewritten:

"**§ 58-67-160. Fees.**

Every health maintenance organization subject to this Article shall pay to the Commissioner a fee of two hundred fifty dollars ($250.00) for filing an application for a license and ~~a~~ an annual license continuation fee of one thousand dollars ($1,000) for each ~~license renewal.~~ license. The license shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State."

SECTION 26.(n) G.S. 58-67-20 reads as rewritten:

"**§ 58-67-20. Issuance ~~of certificate.~~ and continuation of license.**

(a) Before issuing or continuing any such ~~certificate,~~ license, the Commissioner of Insurance may make such an examination or investigation as he deems expedient. The Commissioner of Insurance shall issue a ~~certificate of authority~~ license upon the

payment of the application fee prescribed in G.S. 58-67-160 and upon being satisfied on the following points:

(1) The applicant is established as a bona fide health maintenance organization as defined by this Article;

(2) The rates charged and benefits to be provided are fair and reasonable;

(3) The amounts provided as working capital are repayable only out of earned income in excess of amounts paid and payable for operating expenses and expenses of providing services and such reserve as the Department of Insurance deems adequate, as provided hereinafter;

(4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the ~~certificate~~ license and that the health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. Such working capital shall initially be a minimum of one million five hundred thousand dollars ($1,500,000) for any full service medical health maintenance organization. Initial working capital for a single service health maintenance organization shall be a minimum of one hundred thousand dollars ($100,000) or such higher amount as the Commissioner shall determine to be adequate.

(b) In making the determinations required under this section, the Commissioner shall consider:

(1) The financial soundness of the health care plan's arrangements for health care services and the schedule of premiums used in connection therewith;

(2) The adequacy of working capital;

(3) Any agreement with an insurer, a hospital or medical service corporation, a government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of alternative coverage in the event of discontinuance of the plan;

(4) Any agreement with providers for the provision of health care services; and

(5) Any firm commitment of federal funds to the health maintenance organization in the form of a grant, even though such funds have not been paid to the health maintenance organization, provided that the health maintenance organization certifies to the Commissioner that such funds have been committed, that such funds are to be paid to the health maintenance organization with a current fiscal year and that such funds may be used directly for operating purposes and for the benefit of enrollees of the health maintenance organization.

(c) A ~~certificate of authority~~ license shall be denied only after compliance with the requirements of G.S. 58-67-155."

SECTION 27. Sections 26(a) through (n) become effective January 1, 2004, and apply to all company licenses issued or otherwise eligible for renewal or continuation after that date. The remainder of this act becomes effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 276

Committee Substitute Favorable 4/14/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H276-CSRG-21 [v.1]

5/27/2003 10:23:29 AM

Short Title: Insurance Financial Amendments Omnibus.-AB (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE AND TECHNICAL AMENDMENTS IN THE LAWS CONCERNING INSURANCE COMPANY SOLVENCY AND TO PROHIBIT OFFICERS AND EMPLOYEES OF THE STATE AND ITS POLITICAL SUBDIVISIONS FROM REQUIRING CONSTRUCTION CONTRACT BIDDERS TO OBTAIN SURETY BONDS FROM SURETIES OR PRODUCERS DESIGNATED BY THE OFFICERS AND EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-5-5 reads as rewritten:

"**§ 58-5-5. Amount of deposits required of foreign or alien fire and/or marine insurance companies.**

Unless otherwise provided in this Article, every fire, marine, or fire and marine insurance company chartered by any other state or foreign government shall make and maintain deposits of securities with the Commissioner in the amount of ~~twenty-five thousand dollars ($25,000)~~ one hundred thousand dollars ($100,000) market value."

SECTION 2. G.S. 58-5-10 reads as rewritten:

"**§ 58-5-10. Amount of deposits required of foreign or alien fidelity, surety and casualty insurance companies.**

Unless otherwise provided in this Article, every fidelity, surety or casualty insurance company chartered by any other state or foreign government shall make and maintain deposits of securities with the Commissioner in the amount of ~~fifty thousand dollars ($50,000)~~ two hundred thousand dollars ($200,000) market value."

SECTION 3. G.S. 58-5-50 reads as rewritten:

"**§ 58-5-50. Deposits of foreign life insurance companies.**

In addition to other requirements of Articles 1 through 64 of this Chapter, all foreign life insurance companies shall deposit securities, as specified in G.S. 58-5-20, having a market value of ~~one hundred thousand dollars ($100,000)~~ four hundred thousand dollars

($400,000) as a prerequisite of doing business in this State. All foreign life insurance companies shall deposit an additional ~~one hundred thousand dollars ($100,000)~~ two hundred thousand dollars ($200,000) where such companies cannot show three years of net operational gains prior to admission. Foreign life insurance companies that are licensed on or before the effective date of this section shall have one year from that date to comply with this section."

SECTION 4. G.S. 58-7-162(2) reads as rewritten:

"(2) Investments, securities, properties, and loans acquired or held in accordance with this ~~Chapter, and in connection therewith the following items:~~

~~a. Interest due or accrued on any bond or evidence of indebtedness that is not in default.~~

~~b. Declared and unpaid dividends on stock and shares, unless that amount has otherwise been allowed as an asset.~~

~~c. Interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon.~~

~~d. Interest due or accrued on deposits in solvent banks, savings and loan associations, and trust companies, and interest due or accrued on other assets, if the interest is, in the Commissioner's judgment, a collectible asset.~~

~~e. Interest due or accrued on a current mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of 90 days be allowed as an asset.~~

~~f. Rent due or accrued on real property if the rent is not in arrears for more than three months, and rent more than three months in arrears if the payment of the rent is adequately secured by property held in the tenant's name and conveyed to the insurer as collateral and the underlying collateral is admissible under this Chapter.~~

~~g. The unaccrued portion of taxes paid before the due date on real property.~~

Chapter."

SECTION 5. G.S. 58-7-162(5) and G.S. 58-7-162(7) are repealed.

SECTION 6. G.S. 58-7-162(12) reads as rewritten:

"(12) Electronic and mechanical machines, including operating and system software constituting a management information ~~system, if the cost of the system is at least twenty-five thousand dollars ($25,000) but not more than two percent (2%) of total admitted assets; the cost shall be amortized in full over a period not to exceed seven calendar years.~~system."

SECTION 7. G.S. 58-7-163 reads as rewritten:

"**§ 58-7-163. Assets not allowed.**

In addition to assets impliedly excluded by the provisions of G.S. 58-7-162, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

~~(1) Goodwill, trade names, and other like intangible assets.~~

(2) Advances (other than policy loans) to officers, directors, and controlling stockholders, whether secured or not, and advances to employees, agents, and other persons on personal security only.

(3) Stock of the insurer or any material equity therein or loans secured thereby, or any material proportionate interest in the stock acquired or held through the ownership by the insurer of an interest in another firm, corporation, or business unit.

~~(4) Furniture, fixtures, other equipment, safes, vehicles, libraries, stationery, literature, and supplies, other than data processing and accounting systems authorized under G.S. 58-7-162(12), except in the case of title insurers the materials and plants which G.S. 58-7-182 expressly authorizes the insurer to invest in, and except, in the case of any insurer, any personal property that the insurer is permitted to hold under this Chapter, or that is acquired through foreclosure of chattel mortgages acquired under G.S. 58-7-180, or that is reasonably necessary for the maintenance and operation of real estate that the insurer uses for a home office, branch office, and similar purposes.~~

(5) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value of the investments as determined under this Chapter.

(6) Bonds, notes, or other evidences of indebtedness that are secured by mortgages or deeds of trust that are in default, to the extent of the cost or carrying value that is in excess of the value as determined pursuant to other provisions of this Chapter.

~~(7) Prepaid and deferred expenses.~~

(8) Certificates of ~~contribution~~ contribution, surplus notes, or other similar evidences of ~~indebtedness.~~ indebtedness, to the extent that admission of these investments results in the double counting of these investments in the reporting entity's balance sheet.

(9) Any asset that is encumbered in any manner unless the asset is authorized under G.S. 58-7-187 or G.S. 58-7-162(13)."

SECTION 8. G.S. 58-7-192 reads as rewritten:

"**§ 58-7-192. Valuation of securities and investments.**

~~(a) All securities, investments, and evidences of debt, other than those for which valuation methodologies are specifically set forth in this Chapter, that are held by an insurer shall be valued at their market values, at their appraised values, or at prices determined by the insurer as representing their fair market values, subject to the Commissioner's approval.~~

~~(b) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, in the Commissioner's discretion and in accordance with a method of valuation that the Commissioner approves.~~

~~(c) Stock of a subsidiary corporation of an insurer shall not be valued at an amount in excess of its net value as based upon those assets only of the subsidiary that would be eligible under this Chapter and G.S. 58-19-10 for investment of the funds of the insurer direct.~~

(d) No valuations ~~under this section~~ shall be greater than any applicable valuation or method contained in the latest edition of the NAIC publications entitled ~~"Valuations of Securities"~~"Purposes and Procedures Manual of the NAIC Securities Valuation Office" or the "Accounting Practices and Procedures Manual", unless the Commissioner determines that another valuation method is appropriate when it results in a more conservative valuation.

~~(e) All bonds or fully secured indebtedness having a stated term and a rate of interest that are held by an insurer shall be valued in accordance with the procedures and instructions contained in the NAIC publication entitled "Valuations of Securities", unless the Commissioner determines that a more conservative valuation is appropriate.~~"

SECTION 9. G.S. 58-7-193 reads as rewritten:

"**§ 58-7-193. Valuation of property.**

~~(a) Real property acquired pursuant to a mortgage loan or contract for sale shall be valued at the net realizable value, but in no event shall the property be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of the acquisition and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.~~

~~(b) Other real property held by an insurer shall not be valued at an amount in excess of fair market value as determined by recent appraisal and as approved by the Commissioner. If valuation is based on an appraisal more than three years old, the Commissioner may call for and require a new appraisal in order to determine fair value.~~

(c) Personal property acquired pursuant to chattel mortgages made in accordance with G.S. 58-7-180 shall not be valued at an amount greater than the unpaid balance of principal on the defaulted loan at the date of acquisition, or the fair market value of the property, whichever amount is less.

(d) If the Commissioner and an insurer do not agree on the value of real or personal property of an insurer, in carrying out the Commissioner's responsibilities under this section, the Commissioner may retain the services of a qualified real or personal property appraiser. The insurer shall reimburse the Commissioner for the costs of the services of any appraiser incurred with respect to the Commissioner's responsibilities under this section."

SECTION 10. G.S. 58-7-195 is repealed.

SECTION 11. G.S. 58-7-179(d) reads as rewritten:

"(d) In the case of a purchase money mortgage given to secure the purchase price of real estate sold by the insurer, the amount lent or invested shall not exceed the unpaid part of the purchase ~~price and shall be valued in accordance with G.S. 58-7-195.~~price."

SECTION 12. G.S. 58-23-26(c) reads as rewritten:

"(c) Each pool is subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-75, 58-3-81, 58-3-105, 58-6-5, 58-7-21, 58-7-26, 58-7-30, 58-7-31, 58-7-50, 58-7-55, 58-7-140, 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-175, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, ~~58-7-195,~~ 58-7-197, 58-7-200, and Articles 13, 19, and 34 of this Chapter. Annual financial statements required by G.S. 58-2-165 shall be filed by each pool within 60 days after the end of the pool's fiscal year, subject to extension by the Commissioner."

SECTION 13. G.S. 58-47-80 reads as rewritten:

"**§ 58-47-80. Assets and invested assets.**

Funds shall be held and invested by the board under G.S. 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, ~~58-7-195,~~ 58-7-197, 58-7-200, and 58-19-10."

SECTION 14. G.S. 58-8-15 reads as rewritten:

"**§ 58-8-15. Directors in mutual companies.**

Every mutual insurance company shall elect by ballot a board of not less than seven directors, who shall manage and conduct its business and hold office for one year or for such term as the bylaws provide and until their successors are qualified. The directors need not be residents of this State or members of the company. In companies with a guaranty capital, no more than ~~one half~~ one-half of the directors shall be ~~chosen~~ elected by ~~and from~~ the ~~stockholders.~~holders of guaranty capital, except where guaranty capital holders are policyholders. Policyholders which are holders of guaranty capital shall be entitled to one vote for each policy that person holds and one vote for each unit of guaranty capital that person holds."

SECTION 15. G.S. 58-8-20 reads as rewritten:

"**§ 58-8-20. Mutual companies with a guaranty capital.**

(a) A mutual insurance company formed as provided in Articles 1 through 64 of this Chapter, in lieu of the contributed surplus required for the organization of mutual companies under the provisions of G.S. 58-7-75, or a mutual insurance company now existing, may, with the prior approval of the Commissioner, ~~establish~~ tender a guaranty capital offering of not less than fifty thousand dollars ($50,000), divided into ~~shares~~ units of one hundred dollars ($100.00) each, which shall be invested in the same manner as is provided in this Chapter for the investment of the capital stock of insurance companies.

(a1) Guaranty capital may be issued by an existing domestic mutual insurance company only under the following terms and conditions:

(1) To aid and assist a financially troubled domestic mutual insurance company which otherwise faces rehabilitation or liquidation by this Department; or

(2) For any other reason as presented in a petition to the Commissioner and which is found by the Commissioner to be reasonable, justifiable, and in the best interest of all the policyholders of the company.

Guaranty capital issued under subdivision (2) of this subsection shall require written notification of the action proposed by the board of directors of the company to be mailed to the policyholders of the company not less than 30 days before the meeting when the action may be taken. The written notification shall be advertised in two newspapers of general circulation, approved by the Commissioner, not less than three times a week for a period of not less than four weeks before the meeting. The written notification to policyholders shall include a proxy statement to allow policyholders to vote on the proposed action without personal attendance at the meeting, and the Commissioner shall approve both the written notification and the proxy statement. The proposed action shall be effected by a vote of two-thirds of the policyholders voting thereon in person or by proxy.

(b) The board of directors of a company may ~~declare and pay dividends to the stockholders of the guaranty capital of a company, subject to the notification requirements of G.S. 58-19-25(d) and the prior approval requirements of G.S. 58-19-30(c).~~ distribute interest to the holders of guaranty capital in accordance with the guaranty capital filing approved by the Department.

(c) ~~The guaranty~~ Guaranty capital shall be applied to the payment of losses only when the company has exhausted its cash in hand and the invested assets, exclusive of uncollected premiums, and when thus impaired, the directors may make good the whole or any part of it by assessments upon the contingent funds of the company at the date of such impairment. ~~In the event of a merger, demutualization, or other event where the entity ceases to exist, guaranty capital shall only be returned or repaid to the certificate holders to the extent that the guaranty capital had been contributed together with accrued income as specified in the certificate. Any amounts in excess shall be for the benefit of the policyholders.~~

(d) ~~Shareholders and members of such companies are subject to the same provisions of law in respect to their right to vote as apply respectively to shareholders in stock companies and policyholders in mutual companies.~~ Guaranty capital holders are entitled to one vote per unit of guaranty capital. Guaranty capital holders who are not policyholders are not entitled to participate in the policyholder votes prescribed under subdivision (a1)(2) and subsection (e) of this section.

(e) ~~This guaranty~~ Guaranty capital may be reduced or retired by vote of the policyholders of the company and the assent of the Commissioner, if the net assets of the company above its reserve and all other claims and obligations, exclusive of guaranty capital, for two years immediately preceding and including the date of its last annual statement, is not less than twenty-five percent (25%) of the guaranty capital. Due notice of such proposed action on the part of the company must be mailed to each policyholder of the company not less than 30 days before the meeting when the action may be taken, and must also be advertised in two papers of general circulation, approved by the Commissioner, not less than three times a week for a period of not less than four weeks before such meeting. ~~No insurance company with a guaranty capital~~

~~which has ceased to do new business, shall divide to its stockholders any part of its assets or guaranty capital, except income from investments, until it has performed or canceled its policy obligations. In the event of a merger, demutualization, or other event where the entity ceases to exist, guaranty capital shall only be returned or repaid to the certificate holders to the extent that the guaranty capital had been contributed together with accrued income as specified in the certificate. Any amounts in excess shall be for the benefit of the policyholders.~~

(f) No insurance company with guaranty capital shall distribute to its holders of guaranty capital its assets, except as provided in the guaranty capital filing as approved by the Commissioner.

(g) In the event of a merger, demutualization, or other event where the entity ceases to exist, guaranty capital shall only be returned or repaid to the holders of guaranty capital to the extent that the guaranty capital has been contributed together with accrued interest as specified in the filing approved by the Commissioner."

SECTION 16. G.S. 58-8-50 reads as rewritten:

"**§ 58-8-50. Guaranty against assessments prohibited.**

If any director, officer, or agent of a mutual insurance company, either officially or privately, ~~shall give~~ gives a guarantee to a policyholder ~~thereof~~ of the company against an assessment to which ~~such~~ that policyholder would otherwise be liable, ~~he~~ the director, officer, or agent shall be punished by a fine not exceeding ~~one hundred dollars ($100.00)~~ one thousand dollars ($1,000) for each offense."

SECTION 17. G.S. 58-65-1 reads as rewritten:

"**§ 58-65-1. Regulation and definitions; application of other laws; profit and foreign corporations prohibited.**

(a) Any corporation organized under the general corporation laws of the State of North Carolina for the purpose of maintaining and operating a nonprofit hospital or medical or dental service plan whereby hospital care or medical or dental service may be provided in whole or in part by the corporation or by hospitals, physicians, or dentists participating in the plan, or plans, shall be governed by this Article and Article 66 of this Chapter and shall be exempt from all other provisions of the insurance laws of this State, unless otherwise provided.

The term "hospital service plan" as used in this Article ~~and Article 66 of this Chapter~~ includes the contracting for certain fees for, or furnishing of, hospital care, laboratory facilities, X-ray facilities, drugs, appliances, anesthesia, nursing care, operating and obstetrical equipment, accommodations or any other services authorized or permitted to be furnished by a hospital under the laws of the State of North Carolina and approved by the North Carolina Hospital Association or the American Medical Association.

The term "medical service plan" as used in this Article ~~and Article 66 of this Chapter~~ includes the contracting for the payment of fees toward, or furnishing of, medical, obstetrical, surgical or any other professional services authorized or permitted to be furnished by a duly licensed physician or other provider listed in G.S. 58-50-30. The term "medical services plan" also includes the contracting for the payment of fees toward, or furnishing of, professional medical services authorized or permitted to be

furnished by a duly licensed provider of health services licensed under Chapter 90 of the General Statutes.

The term "dental service plan" as used in this Article ~~and Article 66 of this Chapter~~ includes contracting for the payment ~~2of~~ of fees toward, or furnishing of dental or any other professional services authorized or permitted to be furnished by a duly licensed dentist.

The term "hospital service corporation" as used in this Article ~~and Article 66 of this Chapter~~ is intended to mean any nonprofit corporation operating a hospital or medical or dental service plan, as defined in this section. Any corporation organized and subject to the provisions of this ~~Article and Article 66 of this Chapter,~~ Article, the certificate of incorporation of which authorizes the operation of either a hospital or medical or dental service plan, or any or all of them, may, with the approval of the ~~Commissioner of Insurance,~~ Commissioner, issue subscribers' contracts or certificates approved by the Commissioner of Insurance, for the payment of either hospital or medical or dental fees, or the furnishing of such services, or any or all of them, and may enter into contracts with hospitals for physicians or dentists, or any or all of them, for the furnishing of fees or services respectively under a hospital or medical or dental service plan, or any or all of them.

The term "preferred provider" as used in this Article ~~and Article 66 of this Chapter~~ with respect to contracts, organizations, policies or otherwise means a health care service provider who has agreed to accept, from a corporation organized for the purposes authorized by this Article ~~and Article 66 of this Chapter~~ or other applicable law, special reimbursement terms in exchange for providing services to beneficiaries of a plan administered pursuant to this ~~Article and Article 66 of this Chapter.~~ Article. Except to the extent prohibited either by G.S. 58-65-140 or by rules ~~promulgated~~ adopted by the ~~Department of Insurance~~ Commissioner not inconsistent with this ~~Article and Article 66 of this Chapter,~~ Article, the contractual terms and conditions for special reimbursement shall be those which the corporation and preferred provider find to be mutually agreeable.

~~licensed licensed~~

(b) through (c) Repealed by Session Laws 2001-297.

~~licensed licensed Social Work and Licensure~~

(d) No foreign or alien hospital or medical or dental service corporation as herein defined shall be authorized to do business in this State."

SECTION 18. G.S. 58-65-95(a) reads as rewritten:

"(a) ~~No corporation~~ Corporations subject to this Article shall invest in ~~any securities other than securities~~ or hold only those assets permitted by Article 7 of this Chapter for ~~the investment of assets of~~ life and health insurance companies."

SECTION 19. G.S. 58-67-5(i) reads as rewritten:

"(i) "Net worth" means the excess of total assets over the total liabilities and may include borrowed funds that are repayable only from the net earned income of the health maintenance organization and repayable only with the advance permission of the Commissioner. For the purposes of this subsection, "assets" means (i) tangible assets and (ii) other investments permitted under ~~G.S. 58-67-60; provided, however, that the~~

~~depreciated cost of office furniture and equipment in the principal office shall not exceed ten percent (10%) of a health maintenance organization's net worth.~~ G.S. 58-67-60."

SECTION 20. G.S. 58-67-40 is repealed.

SECTION 21. G.S. 58-67-110 reads as rewritten:

"**§ 58-67-110. Protection against insolvency.**

(a) The Commissioner shall require deposits in accordance with the provisions of G.S. 58-67-25.

(b) Each full service ~~medical~~ health maintenance organization shall maintain a minimum net worth ~~of not less than one million dollars ($1,000,000), which shall be increased by the amount of the contingency reserves calculated annually in accordance with the provisions of G.S. 58-67-40. The net worth calculation shall be computed in accordance with statutory accounting principles generally recognized in the regulation of health maintenance organizations and the Commissioner may promulgate such regulations as he deems appropriate to carry out the provisions of this section. If a health maintenance organization fails to comply with the net worth requirement of this subsection or subsections (c) or (d) of this section, the Commissioner is authorized to take appropriate action to assure that the continued operation of the health maintenance organization will not be hazardous to its enrollees.~~ equal to the greater of one million dollars ($1,000,000) or the amount required pursuant to the risk-based capital provisions of Article 12 of this Chapter. Each single service health maintenance organization shall maintain a minimum net worth equal to the greater of fifty thousand dollars ($50,000) or that amount required pursuant to the risk-based capital provisions of Article 12 of this Chapter.

~~(c) The minimum net worth for a health maintenance organization authorized to operate on July 17, 1987, and having a net worth of less than one million dollars ($1,000,000) shall be as follows:~~

~~(1) $150,000 by December 31, 1987~~
~~(2) $300,000 by December 31, 1988~~
~~(3) $450,000 by December 31, 1989~~
~~(4) $750,000 by December 31, 1990~~
~~(5) $1,000,000 by December 31, 1991~~

~~The net worth amounts required by this section shall be in addition to the contingency reserves required by G.S. 58-67-40.~~

~~(d) Notwithstanding any other provision of this Article, a health maintenance organization authorized to offer only a single health care service plan providing a single health care service must have a minimum net worth of fifty thousand dollars ($50,000). The minimum net worth for such plan authorized to operate on July 17, 1987, and having a net worth of less than fifty thousand dollars ($50,000) shall be as follows:~~

~~(1) Twenty-five thousand dollars ($25,000) by December 31, 1987; and~~
~~(2) Fifty thousand dollars ($50,000) by December 31, 1988;~~

~~The net worth amounts required by this section shall be in addition to the contingency reserves required by G.S. 58-67-40.~~

(e) Every full service medical health maintenance organization shall have and maintain at all times an adequate plan for protection against insolvency acceptable to the Commissioner. In determining the adequacy of such a plan, the Commissioner may consider:

(1) A reinsurance agreement preapproved by the Commissioner covering excess loss, stop loss, or catastrophes. The agreement must provide that the Commissioner will be notified no less than 60 days prior to cancellation or reduction of coverage.

(2) A conversion policy or policies that will be offered by an insurer to the enrollees in the event of the health maintenance organization's insolvency.

(3) Any other arrangements offering protection against insolvency that the Commissioner may require."

SECTION 22. G.S. 58-67-140(a)(3) reads as rewritten:

"(3) ~~No longer maintains the financial reserve specified in G.S. 58-67-40 or is~~ Is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees."

SECTION 23. G.S. 58-67-140(a)(7) reads as rewritten:

"(7) Has knowingly published or made to the Department or to the public any false statement or report, including any report or any data that serves as the basis for any report, required to be submitted under ~~G.S. 58-3-210.~~G.S. 58-3-191."

SECTION 24. G.S. 58-47-65(a) reads as rewritten:

"(a) No group shall self-insure its workers' compensation liabilities under the Act unless it is licensed by the Commissioner under this Part. This subsection does not apply to a group that was organized and approved under the North Carolina law before July 1, 1995, and whose authority to self-insure its workers' compensation liabilities under the Act has not terminated after that date."

SECTION 25. G.S. 97-170(a) reads as rewritten:

"(a) No employer shall self-insure its workers' compensation liabilities under the Act unless it is licensed by the Commissioner under this Article. This subsection does not apply to an employer authorized to self-insure its workers' compensation liabilities under the Act prior to December 1, 1997, whose authority to self-insure its workers' compensation liabilities under the Act has not terminated after that date."

SECTION 26.(a) G.S. 58-3-100 reads as rewritten:

"**§ 58-3-100. Insurance company licensing provisions.**

(a) The Commissioner may, after notice and opportunity for a hearing, revoke, suspend, ~~restrict, or refuse to renew~~ or restrict the license of any insurer if:

(1) The insurer fails or refuses to comply with any law, order or rule applicable to the insurer.

(2) The insurer's financial condition is unsound, or its assets above its liabilities, exclusive of capital, are less than the amount of its capital or required minimum surplus.

(3) The insurer has published or made to the Department or to the public any false statement or report.

(4) The insurer or any of the insurer's officers, directors, employees, or other representatives refuse to submit to any examination authorized by law or refuse to perform any legal obligation in relation to an examination.

(5) The insurer is found to make a practice of unduly engaging in litigation or of delaying the investigation of claims or the adjustment or payment of valid claims.

(b) Any suspension, revocation or refusal to renew suspension or revocation of an insurer's license under this section may also be made applicable to the license or registration of any individual regulated under this Chapter who is a party to any of the causes for licensing sanctions listed in subsection (a) of this section."

SECTION 26.(b) G.S. 58-4-15 reads as rewritten:

"**§ 58-4-15. Revocation or suspension of license.**

The Commissioner may ~~suspend, revoke, or refuse to renew~~ suspend or revoke the license of any insurer failing to file its financial statement when due or within any extension of time that the Commissioner, for good cause, may have granted."

SECTION 26.(c) G.S. 58-6-7 reads as rewritten:

"**§ 58-6-7. Licenses; perpetual licensing; annual license continuation ~~Annual license~~ fees for insurance companies.**

(a) In order to do business in this State, an insurance company shall apply for and obtain a license from the ~~Commissioner by March 1 of each year.~~ Commissioner. The license shall be perpetual and ~~become effective the following July 1 and shall remain in effect for one year.~~ shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with this Chapter and subject to any other applicable provision of the insurance laws of this State. Except as provided in subsection (b) of this section, the insurance company shall pay ~~an annual~~ a fee for each year the license is in effect, as follows:

For each domestic farmer's mutual assessment fire insurance company.....$ 25.00
For each fraternal order.....100.00
For each of all other insurance companies, except mutual burial associations taxed under G.S. 105-121.1.....1,000.00

The fees levied in this subsection are in addition to those specified in G.S. 58-6-5.

(b) When the paid-in capital stock or surplus, or both, of an insurance company, other than a farmer's mutual assessment company or a fraternal order, does not exceed one hundred thousand dollars ($100,000), the fee levied in this section shall be one-half the amount specified.

(c) Upon payment of the fee specified above and the fees and taxes elsewhere specified each insurance company, exchange, bureau, or agency, shall be entitled to do the types of business specified in Chapter 58, of the General Statutes of North Carolina as amended, to the extent authorized therein, except that: Insurance companies authorized to do either the types of business specified for (i) life insurance companies, or (ii) for fire and marine companies, or (iii) for casualty and fidelity and surety

companies, in G.S. 58-7-75, which shall also do the types of business authorized in one or both of the other of the above classifications shall in addition to the fees above specified pay one hundred dollars ($100.00) for each such additional classification of business done. All fees and charges collected by the Commissioner under this Chapter are nonrefundable.

(d) Any rating bureau established by action of the General Assembly of North Carolina shall be exempt from the fees in this section."

SECTION 26.(d) G.S. 58-6-15 reads as rewritten:

"**§ 58-6-15. ~~Licenses run from July 1.~~ Annual license continuation fee definition; requirements.**

~~The license required of insurance companies shall continue, continue for the next ensuing 12 months after July 1 of each year, unless revoked as provided in Articles 1 through 64 of this Chapter. Application for renewal of the company license~~ For purposes of this Chapter only, "annual license continuation fee means" the fee specified in G.S. 58-6-7 submitted to the Commissioner for each year the license is in effect after the company's year of initial licensing. The annual license continuation fee must be submitted on or before the first day of March on a form to be supplied by the ~~Commissioner.~~ Commissioner each year the license is to remain in effect. If the Commissioner is satisfied ~~Upon satisfying himself~~ that the company has met all requirements of law and appears to be financially ~~solvent he shall forward the renewal license to the company. Any company which does not qualify for a renewal license before July 1 shall cease to do business in the State of North Carolina as of July 1, unless its license is sooner revoked by the Commissioner.~~ solvent, the Commissioner shall not revoke or suspend the license of the company, and the company shall be authorized to do business in this State, subject to all other applicable provisions of the insurance laws of this State. Nothing contained in this section shall be interpreted as applying to licenses issued to individual representatives of insurance companies."

SECTION 26.(e) G.S. 58-6-30 reads as rewritten:

"**§ 58-15-30. License, surplus, and deposit requirements.**

(a) No reciprocal shall engage in any insurance transaction in this State until it has obtained a license to do so in accordance with the applicable provisions of Articles 1 through 64 of this Chapter. ~~Such~~The license shall continue in full force and effect, subject to timely payment of an annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State.~~expire on the last day of June of each year.~~

(b) No domestic or foreign reciprocal shall be licensed in this State unless it has a surplus to policyholders of at least eight hundred thousand dollars ($800,000); and no alien reciprocal shall be licensed unless it has a trusteed surplus of at least eight hundred thousand dollars ($800,000).

(c) Each domestic, foreign, or alien reciprocal licensed in this State must maintain a minimum deposit with the Commissioner of at least one hundred thousand dollars ($100,000) in cash or in value of securities of the kind specified in G.S. 58-5-15, which shall be subject to the same conditions as contained in Article 5 of this Chapter."

SECTION 26.(f) G.S. 58-19-65 reads as rewritten:

"§ 58-19-65. ~~Revocation, suspension, or nonrenewal~~ Revocation or suspension of insurer's license.

Whenever it appears to the Commissioner that any person has committed a violation of this Article that makes the continued operation of an insurer contrary to the interests of policyholders or the public, the Commissioner may, after giving notice and an opportunity to be heard, ~~suspend, revoke, or refuse to renew~~ suspend or revoke such insurer's license to do business in this State for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law."

SECTION 26.(g) G.S. 58-24-130 reads as rewritten:

"§ 58-24-130. ~~Annual~~ Perpetual license.

~~Societies which are now authorized to transact business in this State may continue such business until the 30th day of June next succeeding January 1, 1988. The authority of such societies and all societies hereafter licensed, may thereafter be renewed annually, but in all cases to terminate on the 30th day of the succeeding June. However, a license so issued~~ Subject to timely payment of the annual license continuation fee and subject to any other applicable provisions of the insurance laws of this State, a license, other than a preliminary license, to a fraternal benefit society under this Article shall continue in full force and ~~effect until the new license be issued or specifically refused.~~ effect. For each ~~such~~ license ~~or renewal~~ the society shall pay the Commissioner the fee specified in G.S. 58-6-5. The society shall pay the Commissioner, as an annual license continuation fee and a condition of the continuation of the license, the fee specified in G.S. 58-6-7 on or before the first day of March on a form to be supplied by the Commissioner. A duly certified copy or duplicate of ~~such~~the license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of Articles 1 through 64 of this Chapter."

SECTION 26.(h) G.S. 58-26-10 reads as rewritten:

"**§ 58-26-10. Financial statements and licenses required.**

Title insurance companies are subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-165, 58-2-180, and 58-6-5. The Commissioner may require title insurance companies to separately report their experience in insuring titles and in insuring closing services. The license to do business in this State issued to a title insurance company shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State. The Commissioner shall annually license ~~such companies and their agents.~~ the agents of title insurance companies."

SECTION 26.(i) G.S. 58-30-62 reads as rewritten:

"**§ 58-30-62. Administrative supervision of insurers.**

(a) As used in this section, an insurer has "exceeded its powers" when it: has refused to permit examination of its books, papers, accounts, records or affairs by the Commissioner; has in violation of G.S. 58-7-50 removed from this State books, papers, accounts or records necessary for an examination of the insurer; has failed to comply promptly with applicable financial reporting statutes or rules and related Department

requests; continues to transact the business of insurance after its license has been ~~revoked, suspended, or not renewed~~ revoked or suspended by the Commissioner; by contract or otherwise, has unlawfully, or has in violation of an order of the Commissioner, or has without first having obtained any legally required written approval of the Commissioner, totally reinsured its entire outstanding business or merged or consolidated substantially its entire property or business with another insurer; has engaged in any transaction in which it is not authorized to engage under the laws of this State; has not complied with G.S. 58-7-73; or has refused to comply with a lawful order of the Commissioner. As used in this section, "Commissioner" includes an authorized representative or designee of the Commissioner."

SECTION 26.(j) G.S. 58-65-55 reads as rewritten:

"**§ 58-65-55. Issuance ~~of certificate.~~ and continuation of license.**

(a) Before issuing or continuing any such license or certificate the Commissioner may make such an examination or investigation as the Commissioner deems expedient. The Commissioner shall issue a ~~certificate of authority or~~ license upon the payment of ~~an annual~~ a fee of one thousand dollars ($1,000) and upon being satisfied on the following points:

(1) The applicant is established as a bona fide nonprofit hospital service corporation as defined by this Article and Article 66 of this Chapter.

(2) The rates charged and benefits to be provided are fair and reasonable.

(3) The amounts provided as working capital of the corporation are repayable only out of earned income in excess of amounts paid and payable for operating expenses and hospital and medical and/or dental expenses and such reserve as the Department deems adequate, as provided hereinafter.

(4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the certificate.

(b) The license shall continue in full force and effect, subject to payment of an annual license continuation fee of one thousand dollars ($1,000), subject to all other provisions of subsection (a) of this section and subject to any other applicable provisions of the insurance laws of this State."

SECTION 26.(k) G.S. 58-65-125 reads as rewritten:

"**§ 58-65-125. ~~Revocation, suspension, and refusal to renew~~ Revocation and suspension of license; unfair trade practices.**

(a) The Commissioner may ~~revoke, suspend, or refuse to renew~~revoke or suspend the license of any service corporation if:

(1) The service corporation fails or refuses to comply with any law, order, or rule applicable to the service corporation.

(2) The service corporation's financial condition is unsound.

(3) The service corporation has published or made to the Department or to the public any false statement or report.

(4) The service corporation refuses to submit to any examination authorized by law.

(5) The service corporation is found to make a practice of unduly engaging in litigation or of delaying the investigation of claims or the adjustment or payment of valid claims.

(b) Any ~~suspension, revocation, or refusal to renew~~ suspension or revocation of a service corporation's license under this section may also be made applicable to the license or registration of any natural person regulated under this Chapter who is a party to any of the causes for licensing sanctions listed in subsection (a) of this section.

(c) Article 63 of this Chapter applies to service corporations and their agents and representatives."

SECTION 26.(l) G.S. 58-67-140 reads as rewritten:

"**§ 58-67-140. Suspension or revocation of license.**

(a) The Commissioner may ~~suspend, revoke, or refuse to renew~~ suspend or revoke an HMO license if the Commissioner finds that the HMO:

(1) Is operating significantly in contravention of its basic organizational document, or in a manner contrary to that described in and reasonably inferred from any other information submitted under G.S. 58-67-10, unless amendments to such submissions have been filed with and approved by the Commissioner.

(2) Issues evidences of coverage or uses a schedule of premiums for health care services that do not comply with G.S. 58-67-50.

(3) No longer maintains the financial reserve specified in G.S. 58-67-40 or is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.

(4) Has itself or through any person on its behalf advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner.

(5) Is operating in a manner that would be hazardous to its enrollees.

(6) Knowingly or repeatedly fails or refuses to comply with any law or rule applicable to the HMO or with any order issued by the Commissioner after notice and opportunity for a hearing.

(7) Has knowingly published or made to the Department or to the public any false statement or report, including any report or any data that serves as the basis for any report, required to be submitted under G.S. 58-3-210."

SECTION 26.(m) G.S. 58-67-160 reads as rewritten:

"**§ 58-67-160. Fees.**

Every health maintenance organization subject to this Article shall pay to the Commissioner a fee of two hundred fifty dollars ($250.00) for filing an application for a license and ~~a~~ an annual license continuation fee of one thousand dollars ($1,000) for each ~~license renewal.~~ license. The license shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State."

SECTION 26.(n) G.S. 58-67-20 reads as rewritten:

"**§ 58-67-20. Issuance ~~of certificate.~~ and continuation of license.**

(a) Before issuing or continuing any such ~~certificate,~~ license, the Commissioner of Insurance may make such an examination or investigation as he deems expedient. The Commissioner of Insurance shall issue a ~~certificate of authority~~ license upon the payment of the application fee prescribed in G.S. 58-67-160 and upon being satisfied on the following points:

(1) The applicant is established as a bona fide health maintenance organization as defined by this Article;

(2) The rates charged and benefits to be provided are fair and reasonable;

(3) The amounts provided as working capital are repayable only out of earned income in excess of amounts paid and payable for operating expenses and expenses of providing services and such reserve as the Department of Insurance deems adequate, as provided hereinafter;

(4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the ~~certificate~~ license and that the health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. Such working capital shall initially be a minimum of one million five hundred thousand dollars ($1,500,000) for any full service medical health maintenance organization. Initial working capital for a single service health maintenance organization shall be a minimum of one hundred thousand dollars ($100,000) or such higher amount as the Commissioner shall determine to be adequate.

(b) In making the determinations required under this section, the Commissioner shall consider:

(1) The financial soundness of the health care plan's arrangements for health care services and the schedule of premiums used in connection therewith;

(2) The adequacy of working capital;

(3) Any agreement with an insurer, a hospital or medical service corporation, a government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of alternative coverage in the event of discontinuance of the plan;

(4) Any agreement with providers for the provision of health care services; and

(5) Any firm commitment of federal funds to the health maintenance organization in the form of a grant, even though such funds have not been paid to the health maintenance organization, provided that the health maintenance organization certifies to the Commissioner that such funds have been committed, that such funds are to be paid to the

health maintenance organization with a current fiscal year and that such funds may be used directly for operating purposes and for the benefit of enrollees of the health maintenance organization.

(c) A ~~certificate of authority~~ license shall be denied only after compliance with the requirements of G.S. 58-67-155."

SECTION 27. Article 31 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-31-66. Public construction contract surety bonds.**

(a) Neither the State nor any county, city, or other political subdivision of the State, or any officer, employee, or other person acting on behalf of any such entity shall, with respect to any public building or construction contract, require any contractor, bidder, or proposer to procure a bid bond, payment bond, or performance bond from a particular surety, agent, producer, or broker.

(b) Nothing in this section prohibits an officer or employee acting on behalf of the State or a county, city, or other political subdivision of the State from:

(1) Approving the form, sufficiency, or manner of execution of the surety bonds furnished by the surety selected by the bidder to underwrite the bonds.

(2) Disapproving, on a reasonable, nondiscriminatory basis, the surety selected by the bidder to underwrite the bonds of the financial condition of the surety.

(c) A violation of this section renders the public building or construction contract void ab initio."

SECTION 28. Sections 26(a) through (n) become effective January 1, 2004, and apply to all company licenses issued or otherwise eligible for renewal or continuation after that date. The remainder of this act becomes effective October 1, 2003.

SECTION-BY SECTION SUMMARY - PCS for HOUSE BILL 276-INSURANCE FINANCIAL AMENDMENTS OMNIBUS

Sections 1. through 3. Amendments to Initial Deposits Laws.

Section 1. Increases initial deposit required from foreign or alien fire, marine, and fire and marine insurers from $25,000 to $100,000.

Section 2. Increases initial deposit required from foreign or alien fidelity, surety or casualty insurers from $50,000 to $200,000.

Section 3. Increases initial deposit required from foreign life insurers from $100,000 to $400,000 and an additional $200,000 rather than $100,000 when the insurer cannot show three years of operational gains before admission.

Sections 4. through 13. Conform N.C. Law in Article 7- General Domestic Insurance Companies – to the Statements of Statutory Accounting Principles adopted by the NAIC. Note: pursuant to G.S. 58-2-165(c), all financial statements filed under that section must be in accordance with the appropriate procedures and standards adopted by the NAIC unless a different standard or procedure is set forth. These changes remove conflicts between N.C. law and the NAIC SSAPs.

Section 4. Repeals G.S. 58-7-162(2)(a),(b),(c),(d),(e),(f), and (g) to remove all specially designated provisions regarding certain investments, securities, properties and loans acquired or held governing assets allowable or admitted for determining the financial condition of an insurer.

Section 5. repeals G.S. 58-7-162 (5) and G.S. 58-7-162 (7) to conform NC law to the SSAPs regarding non-admission of uncollected direct bill premiums and installment premiums more than 90 days old.

Section 6. Removes a provision in G.S. 58-7-162(12) placing certain criteria on the counting of electronic and mechanical machines in order to conform to the respective SSAP.

Section 7. repeals G.S. 58-7-163(1),(4), and (7), to eliminate NC's deviations from the SSAPs regarding the admissibility of assets such as "goodwill", "furniture, fixtures, other equipment" and the like, and "prepaid and deferred expenses" and amends subsection (8) to provide that certain debt-related instruments must be non-admitted assets to the extent that admissibility would allow them to be "double-counted."

Section 8. repeals G.S. 58-7-192(a),(b),(c),(e) and portions of (d), governing the valuation of securities and investments, to remove certain inconsistencies with the SSAPs, to clarify that the valuations limitations are not restricted to that particular statute but apply throughout the Chapter, and to update cross-reference to the appropriate NAIC publication.

Section 9. Repeals G.S. 58-7-193(a) and (b) governing valuation of real property to remove conflicts with SSAPs.

Section 10. Repeals G.S. 58-7-195, governing valuation of purchase money mortgages to default to the applicable SSAP rules.

Section 11. amends G.S. 58-7-179 (d) to remove reference to G.S. 58-7-195, which is repealed by Section 10 of the bill.

Section 12. amends G.S. 58-23-26(c) to remove reference to G.S. 58-7-195, which is repealed by Section 10 of the bill.

Section 13. amends G.S. 58-47-80 to remove reference to G.S. 58-7-195, which is repealed by Section 10 of the bill.

Sections 14. through 16. Amendments to Article 8 – Mutual Insurance Companies.

Section 14. Amends G.S. 58-8-15, governing directors of mutual insurers, to prohibit more than one half of directors of guaranty capital companies from being elected by guaranty capital holders (investors) unless those guaranty capital holders are also policyholders. The amendment further provides that, for guaranty capital companies, policyholders who are also guaranty capital holders are entitle to one vote for each policy the person holds and one vote for each unit of guaranty capital the person holds.

Section 15. Amends G.S. 58-8-20, which sets forth special rules for mutual insurers with guaranty capital, to:

- Make minor technical wording changes.

- Codify an existing rule to only allow a domestic mutual insurer to issue guaranty capital if: (i) it will aid a financially troubles insurer otherwise facing rehabilitation or liquidation by the Department; or (ii) for any reason presented in a petition to the Commissioner and which the Commissioner finds to be reasonable, justifiable and in the best interest of policyholders. This codification included notice –to-policyholder provisions required if the insurer has to petition the Commissioner to be eligible to issue guaranty capital.

- Clarify that holders of guaranty capital receive "interest" not "dividends' and that the distribution of interest must be in accordance with the insurer filing with the Commissioner.

- Reorganize the statute by moving two provisions, one in subsection (c) governing repayment of guaranty capital in the event the insurer is merged, demutualized or otherwise ceases to exist, and another in subsection (e) restricting asset distribution until all policy obligations have been met, to two new subsections, (g) and (f) respectively.

- Amend subsection (d) of the statute consistent with previous changes regarding voting rights of guaranty capital holders and prohibit guaranty capital holders, unless they are also policyholders, from participating in a vote to petition the Commissioner to allow issuance of more guaranty capital stock

and from participating in any vote to reduce or retire guaranty capital, when the criteria for such a vote have been satisfied pursuant to subsection (e).

Section 16. Increases the penalty from a maximum fine of $100 to $1000 for a director, officer or agent of a guaranty capital insurer who gives a policyholder a guaranty against an assessment in violation of G.S. 58-8-50.

Section 17. Amends G.S. 58-65-1, setting forth regulations and definitions applicable to the insurance laws governing hospital, medical and dental service corporations (BCBS) to clarify that the definitions of "hospital service plan", "medical service plan", "dental service plan", "hospital service corporation", and "preferred provider" in Article 65 also apply in Article 66 – Readable Insurance Certificates. This section also makes technical changes and eliminates two "printing" errors inadvertently in the statute due to previous bill drafting anomalies. This section also clarifies that a preferred provider's special reimbursement terms and conditions must be consistent both with Article 65 and Article 66 provisions.

Section 18. Rewords G.S. 58-65-95(a), limiting the kinds of assets and investments that a hospital, medical and dental service corporation can hold to the same as permitted for life and health insurance companies as set forth in Article 7 of Chapter 58.

Section 19. Removes the provision governing the allowance of office furniture as part of net worth to the extent it is less than 10% of an HMOs net worth. The relevant SSAP does not allow furniture and equipment to be included in net worth. This is an additional change to conform NC's law to rules of the SSAP.

Sections 20. through 23. – Amends Article 67- Health Maintenance Organizations.

Section 20. Repeals the reserve requirements for HMOs under G.S.58-67-40 because they are unnecessary due to the risk-based capital (RBC) laws in Article 12.

Section 21. Amends G.S. 58-67-110, governing protection against HMO insolvency to replace old net worth requirements and impose new ones that a full service HMO must maintain a net worth equal to the greater of $1 million or the amount required under RBC and single service HMO must maintain a net worth equal to the greater of $50,000 or the amount required under RBC. The PCS corrects an inadvertent drafting error in the First Edition (which accidentally removed an existing and necessary requirement that every full service HMO maintain a plan of insolvency acceptable to the Commissioner.)

Section 22. Eliminates reference to G.S. 58-67-40, which is repealed by Section 19. of the bill.

Section 23. Technically corrects a cross-reference to G.S. 58-3-210, a non-existent section, to reflect the correct cross-reference, G.S. 58-3-191, Managed care reporting and disclosure requirements.

Sections 24. and 25. Codify Departmental policy that the initial licensing requirements for groups and employers that self-insure for workers' compensation do not apply to entities that existed prior to the adoption of the new laws but do apply if the entity has subsequently terminated and later seeks to reactivate.

Sections 26.(a). through 26.(n.) amend numerous statutes throughout Chapter 58 to change the process from annual licensing of companies to perpetual licensing of companies. There is no change in the criteria for issuance of a license. It will save the Department and likely the companies administrative costs and will change the process from "renewal" of licensure to "continuation" of licensure. These changes apply to companies (and fraternal benefit societies) not agents.

Section 27. Prohibits State and local government officials from requiring bidders on public construction contracts to get their bonds from designated surety companies or surety agents or brokers.

Section 28. Makes Sections 26.(a.) through (m.) of the act effective January 1, 2004. The remainder of the act is to become effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 276

Committee Substitute Favorable 4/14/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H276-PCS30349-RG-21

Short Title: Insurance Financial Amendments Omnibus.-AB (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE SUBSTANTIVE AND TECHNICAL AMENDMENTS IN THE LAWS CONCERNING INSURANCE COMPANY SOLVENCY AND TO PROHIBIT OFFICERS AND EMPLOYEES OF THE STATE AND ITS POLITICAL SUBDIVISIONS FROM REQUIRING CONSTRUCTION CONTRACT BIDDERS TO OBTAIN SURETY BONDS FROM SURETIES OR PRODUCERS DESIGNATED BY THE OFFICERS AND EMPLOYEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-5-5 reads as rewritten:

"**§ 58-5-5. Amount of deposits required of foreign or alien fire and/or marine insurance companies.**

Unless otherwise provided in this Article, every fire, marine, or fire and marine insurance company chartered by any other state or foreign government shall make and maintain deposits of securities with the Commissioner in the amount of ~~twenty-five thousand dollars ($25,000)~~ one hundred thousand dollars ($100,000) market value."

SECTION 2. G.S. 58-5-10 reads as rewritten:

"**§ 58-5-10. Amount of deposits required of foreign or alien fidelity, surety and casualty insurance companies.**

Unless otherwise provided in this Article, every fidelity, surety or casualty insurance company chartered by any other state or foreign government shall make and maintain deposits of securities with the Commissioner in the amount of ~~fifty thousand dollars ($50,000)~~ two hundred thousand dollars ($200,000) market value."

SECTION 3. G.S. 58-5-50 reads as rewritten:

"**§ 58-5-50. Deposits of foreign life insurance companies.**

In addition to other requirements of Articles 1 through 64 of this Chapter, all foreign life insurance companies shall deposit securities, as specified in G.S. 58-5-20, having a market value of ~~one hundred thousand dollars ($100,000)~~ four hundred thousand dollars

($400,000) as a prerequisite of doing business in this State. All foreign life insurance companies shall deposit an additional ~~one hundred thousand dollars ($100,000)~~ two hundred thousand dollars ($200,000) where such companies cannot show three years of net operational gains prior to admission. Foreign life insurance companies that are licensed on or before the effective date of this section shall have one year from that date to comply with this section."

SECTION 4. G.S. 58-7-162(2) reads as rewritten:

"(2) Investments, securities, properties, and loans acquired or held in accordance with this ~~Chapter, and in connection therewith the following items:~~

~~a. Interest due or accrued on any bond or evidence of indebtedness that is not in default.~~

~~b. Declared and unpaid dividends on stock and shares, unless that amount has otherwise been allowed as an asset.~~

~~c. Interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon.~~

~~d. Interest due or accrued on deposits in solvent banks, savings and loan associations, and trust companies, and interest due or accrued on other assets, if the interest is, in the Commissioner's judgment, a collectible asset.~~

~~e. Interest due or accrued on a current mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of 90 days be allowed as an asset.~~

~~f. Rent due or accrued on real property if the rent is not in arrears for more than three months, and rent more than three months in arrears if the payment of the rent is adequately secured by property held in the tenant's name and conveyed to the insurer as collateral and the underlying collateral is admissible under this Chapter.~~

~~g. The unaccrued portion of taxes paid before the due date on real property.~~

Chapter."

SECTION 5. G.S. 58-7-162(5) and G.S. 58-7-162(7) are repealed.

SECTION 6. G.S. 58-7-162(12) reads as rewritten:

"(12) Electronic and mechanical machines, including operating and system software constituting a management information ~~system, if the cost of the system is at least twenty-five thousand dollars ($25,000) but not more than two percent (2%) of total admitted assets; the cost shall be amortized in full over a period not to exceed seven calendar years.~~system."

SECTION 7. G.S. 58-7-163 reads as rewritten:

"**§ 58-7-163. Assets not allowed.**

In addition to assets impliedly excluded by the provisions of G.S. 58-7-162, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

~~(1) Goodwill, trade names, and other like intangible assets.~~

(2) Advances (other than policy loans) to officers, directors, and controlling stockholders, whether secured or not, and advances to employees, agents, and other persons on personal security only.

(3) Stock of the insurer or any material equity therein or loans secured thereby, or any material proportionate interest in the stock acquired or held through the ownership by the insurer of an interest in another firm, corporation, or business unit.

~~(4) Furniture, fixtures, other equipment, safes, vehicles, libraries, stationery, literature, and supplies, other than data processing and accounting systems authorized under G.S. 58-7-162(12), except in the case of title insurers the materials and plants which G.S. 58-7-182 expressly authorizes the insurer to invest in, and except, in the case of any insurer, any personal property that the insurer is permitted to hold under this Chapter, or that is acquired through foreclosure of chattel mortgages acquired under G.S. 58-7-180, or that is reasonably necessary for the maintenance and operation of real estate that the insurer uses for a home office, branch office, and similar purposes.~~

(5) The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value of the investments as determined under this Chapter.

(6) Bonds, notes, or other evidences of indebtedness that are secured by mortgages or deeds of trust that are in default, to the extent of the cost or carrying value that is in excess of the value as determined pursuant to other provisions of this Chapter.

~~(7) Prepaid and deferred expenses.~~

(8) Certificates of ~~contribution~~ contribution, surplus notes, or other similar evidences of ~~indebtedness.~~ indebtedness, to the extent that admission of these investments results in the double counting of these investments in the reporting entity's balance sheet.

(9) Any asset that is encumbered in any manner unless the asset is authorized under G.S. 58-7-187 or G.S. 58-7-162(13)."

SECTION 8. G.S. 58-7-192 reads as rewritten:

"**§ 58-7-192. Valuation of securities and investments.**

~~(a) All securities, investments, and evidences of debt, other than those for which valuation methodologies are specifically set forth in this Chapter, that are held by an insurer shall be valued at their market values, at their appraised values, or at prices determined by the insurer as representing their fair market values, subject to the Commissioner's approval.~~

~~(b) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, in the Commissioner's discretion and in accordance with a method of valuation that the Commissioner approves.~~

~~(c) Stock of a subsidiary corporation of an insurer shall not be valued at an amount in excess of its net value as based upon those assets only of the subsidiary that would be eligible under this Chapter and G.S. 58-19-10 for investment of the funds of the insurer direct.~~

(d) No valuations ~~under this section~~ shall be greater than any applicable valuation or method contained in the latest edition of the NAIC publications entitled ~~"Valuations of Securities"~~"Purposes and Procedures Manual of the NAIC Securities Valuation Office" or the "Accounting Practices and Procedures Manual", unless the Commissioner determines that another valuation method is appropriate when it results in a more conservative valuation.

~~(e) All bonds or fully secured indebtedness having a stated term and a rate of interest that are held by an insurer shall be valued in accordance with the procedures and instructions contained in the NAIC publication entitled "Valuations of Securities", unless the Commissioner determines that a more conservative valuation is appropriate.~~"

SECTION 9. G.S. 58-7-193 reads as rewritten:

"**§ 58-7-193. Valuation of property.**

~~(a) Real property acquired pursuant to a mortgage loan or contract for sale shall be valued at the net realizable value, but in no event shall the property be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of the acquisition and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.~~

~~(b) Other real property held by an insurer shall not be valued at an amount in excess of fair market value as determined by recent appraisal and as approved by the Commissioner. If valuation is based on an appraisal more than three years old, the Commissioner may call for and require a new appraisal in order to determine fair value.~~

(c) Personal property acquired pursuant to chattel mortgages made in accordance with G.S. 58-7-180 shall not be valued at an amount greater than the unpaid balance of principal on the defaulted loan at the date of acquisition, or the fair market value of the property, whichever amount is less.

(d) If the Commissioner and an insurer do not agree on the value of real or personal property of an insurer, in carrying out the Commissioner's responsibilities under this section, the Commissioner may retain the services of a qualified real or personal property appraiser. The insurer shall reimburse the Commissioner for the costs of the services of any appraiser incurred with respect to the Commissioner's responsibilities under this section."

SECTION 10. G.S. 58-7-195 is repealed.

SECTION 11. G.S. 58-7-179(d) reads as rewritten:

"(d) In the case of a purchase money mortgage given to secure the purchase price of real estate sold by the insurer, the amount lent or invested shall not exceed the unpaid part of the purchase ~~price and shall be valued in accordance with G.S. 58-7-195.~~price."

SECTION 12. G.S. 58-23-26(c) reads as rewritten:

"(c) Each pool is subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-150, 58-2-155, 58-2-165, 58-2-180, 58-2-185, 58-2-190, 58-2-200, 58-3-71, 58-3-75, 58-3-81, 58-3-105, 58-6-5, 58-7-21, 58-7-26, 58-7-30, 58-7-31, 58-7-50, 58-7-55, 58-7-140, 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-175, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, ~~58-7-195,~~ 58-7-197, 58-7-200, and Articles 13, 19, and 34 of this Chapter. Annual financial statements required by G.S. 58-2-165 shall be filed by each pool within 60 days after the end of the pool's fiscal year, subject to extension by the Commissioner."

SECTION 13. G.S. 58-47-80 reads as rewritten:

"**§ 58-47-80. Assets and invested assets.**

Funds shall be held and invested by the board under G.S. 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, ~~58-7-195,~~ 58-7-197, 58-7-200, and 58-19-10."

SECTION 14. G.S. 58-8-15 reads as rewritten:

"**§ 58-8-15. Directors in mutual companies.**

Every mutual insurance company shall elect by ballot a board of not less than seven directors, who shall manage and conduct its business and hold office for one year or for such term as the bylaws provide and until their successors are qualified. The directors need not be residents of this State or members of the company. In companies with a guaranty capital, no more than ~~one half~~ one-half of the directors shall be ~~chosen~~ elected by ~~and from~~ the ~~stockholders.~~ holders of guaranty capital, except where guaranty capital holders are policyholders. Policyholders which are holders of guaranty capital shall be entitled to one vote for each policy that person holds and one vote for each unit of guaranty capital that person holds."

SECTION 15. G.S. 58-8-20 reads as rewritten:

"**§ 58-8-20. Mutual companies with a guaranty capital.**

(a) A mutual insurance company formed as provided in Articles 1 through 64 of this Chapter, in lieu of the contributed surplus required for the organization of mutual companies under the provisions of G.S. 58-7-75, or a mutual insurance company now existing, may, with the prior approval of the Commissioner, ~~establish~~ tender a guaranty capital offering of not less than fifty thousand dollars ($50,000), divided into ~~shares~~ units of one hundred dollars ($100.00) each, which shall be invested in the same manner as is provided in this Chapter for the investment of the capital stock of insurance companies.

(a1) Guaranty capital may be issued by an existing domestic mutual insurance company only under the following terms and conditions:

(1) To aid and assist a financially troubled domestic mutual insurance company which otherwise faces rehabilitation or liquidation by this Department; or

(2) For any other reason as presented in a petition to the Commissioner and which is found by the Commissioner to be reasonable, justifiable, and in the best interest of all the policyholders of the company.

Guaranty capital issued under subdivision (2) of this subsection shall require written notification of the action proposed by the board of directors of the company to be mailed to the policyholders of the company not less than 30 days before the meeting when the action may be taken. The written notification shall be advertised in two newspapers of general circulation, approved by the Commissioner, not less than three times a week for a period of not less than four weeks before the meeting. The written notification to policyholders shall include a proxy statement to allow policyholders to vote on the proposed action without personal attendance at the meeting, and the Commissioner shall approve both the written notification and the proxy statement. The proposed action shall be effected by a vote of two-thirds of the policyholders voting thereon in person or by proxy.

(b) The board of directors of a company may ~~declare and pay dividends to the stockholders of the guaranty capital of a company, subject to the notification requirements of G.S. 58-19-25(d) and the prior approval requirements of G.S. 58-19-30(c).~~ distribute interest to the holders of guaranty capital in accordance with the guaranty capital filing approved by the Department.

(c) ~~The guaranty~~ Guaranty capital shall be applied to the payment of losses only when the company has exhausted its cash in hand and the invested assets, exclusive of uncollected premiums, and when thus impaired, the directors may make good the whole or any part of it by assessments upon the contingent funds of the company at the date of such impairment. ~~In the event of a merger, demutualization, or other event where the entity ceases to exist, guaranty capital shall only be returned or repaid to the certificate holders to the extent that the guaranty capital had been contributed together with accrued income as specified in the certificate. Any amounts in excess shall be for the benefit of the policyholders.~~

(d) ~~Shareholders and members of such companies are subject to the same provisions of law in respect to their right to vote as apply respectively to shareholders in stock companies and policyholders in mutual companies.~~ Guaranty capital holders are entitled to one vote per unit of guaranty capital. Guaranty capital holders who are not policyholders are not entitled to participate in the policyholder votes prescribed under subdivision (a1)(2) and subsection (e) of this section.

(e) ~~This guaranty~~ Guaranty capital may be reduced or retired by vote of the policyholders of the company and the assent of the Commissioner, if the net assets of the company above its reserve and all other claims and obligations, exclusive of guaranty capital, for two years immediately preceding and including the date of its last annual statement, is not less than twenty-five percent (25%) of the guaranty capital. Due notice of such proposed action on the part of the company must be mailed to each policyholder of the company not less than 30 days before the meeting when the action may be taken, and must also be advertised in two papers of general circulation, approved by the Commissioner, not less than three times a week for a period of not less than four weeks before such meeting. ~~No insurance company with a guaranty capital~~

~~which has ceased to do new business, shall divide to its stockholders any part of its assets or guaranty capital, except income from investments, until it has performed or canceled its policy obligations. In the event of a merger, demutualization, or other event where the entity ceases to exist, guaranty capital shall only be returned or repaid to the certificate holders to the extent that the guaranty capital had been contributed together with accrued income as specified in the certificate. Any amounts in excess shall be for the benefit of the policyholders.~~

(f) No insurance company with guaranty capital shall distribute to its holders of guaranty capital its assets, except as provided in the guaranty capital filing as approved by the Commissioner.

(g) In the event of a merger, demutualization, or other event where the entity ceases to exist, guaranty capital shall only be returned or repaid to the holders of guaranty capital to the extent that the guaranty capital has been contributed together with accrued interest as specified in the filing approved by the Commissioner."

SECTION 16. G.S. 58-8-50 reads as rewritten:

"**§ 58-8-50. Guaranty against assessments prohibited.**

If any director, officer, or agent of a mutual insurance company, either officially or privately, ~~shall give~~ gives a guarantee to a policyholder ~~thereof~~ of the company against an assessment to which ~~such~~ that policyholder would otherwise be liable, ~~he~~ the director, officer, or agent shall be punished by a fine not exceeding ~~one hundred dollars ($100.00)~~ one thousand dollars ($1,000) for each offense."

SECTION 17. G.S. 58-65-1 reads as rewritten:

"**§ 58-65-1. Regulation and definitions; application of other laws; profit and foreign corporations prohibited.**

(a) Any corporation organized under the general corporation laws of the State of North Carolina for the purpose of maintaining and operating a nonprofit hospital or medical or dental service plan whereby hospital care or medical or dental service may be provided in whole or in part by the corporation or by hospitals, physicians, or dentists participating in the plan, or plans, shall be governed by this Article and Article 66 of this Chapter and shall be exempt from all other provisions of the insurance laws of this State, unless otherwise provided.

The term "hospital service plan" as used in this Article ~~and Article 66 of this Chapter~~ includes the contracting for certain fees for, or furnishing of, hospital care, laboratory facilities, X-ray facilities, drugs, appliances, anesthesia, nursing care, operating and obstetrical equipment, accommodations or any other services authorized or permitted to be furnished by a hospital under the laws of the State of North Carolina and approved by the North Carolina Hospital Association or the American Medical Association.

The term "medical service plan" as used in this Article ~~and Article 66 of this Chapter~~ includes the contracting for the payment of fees toward, or furnishing of, medical, obstetrical, surgical or any other professional services authorized or permitted to be furnished by a duly licensed physician or other provider listed in G.S. 58-50-30. The term "medical services plan" also includes the contracting for the payment of fees toward, or furnishing of, professional medical services authorized or permitted to be

furnished by a duly licensed provider of health services licensed under Chapter 90 of the General Statutes.

The term "dental service plan" as used in this Article ~~and Article 66 of this Chapter~~ includes contracting for the payment ~~2of~~ of fees toward, or furnishing of dental or any other professional services authorized or permitted to be furnished by a duly licensed dentist.

The term "hospital service corporation" as used in this Article ~~and Article 66 of this Chapter~~ is intended to mean any nonprofit corporation operating a hospital or medical or dental service plan, as defined in this section. Any corporation organized and subject to the provisions of this ~~Article and Article 66 of this Chapter,~~ Article, the certificate of incorporation of which authorizes the operation of either a hospital or medical or dental service plan, or any or all of them, may, with the approval of the ~~Commissioner of Insurance,~~ Commissioner, issue subscribers' contracts or certificates approved by the Commissioner of Insurance, for the payment of either hospital or medical or dental fees, or the furnishing of such services, or any or all of them, and may enter into contracts with hospitals for physicians or dentists, or any or all of them, for the furnishing of fees or services respectively under a hospital or medical or dental service plan, or any or all of them.

The term "preferred provider" as used in this Article ~~and Article 66 of this Chapter~~ with respect to contracts, organizations, policies or otherwise means a health care service provider who has agreed to accept, from a corporation organized for the purposes authorized by this Article ~~and Article 66 of this Chapter~~ or other applicable law, special reimbursement terms in exchange for providing services to beneficiaries of a plan administered pursuant to this ~~Article and Article 66 of this Chapter.~~ Article. Except to the extent prohibited either by G.S. 58-65-140 or by rules ~~promulgated~~ adopted by the ~~Department of Insurance~~ Commissioner not inconsistent with this ~~Article and Article 66 of this Chapter,~~ Article, the contractual terms and conditions for special reimbursement shall be those which the corporation and preferred provider find to be mutually agreeable.

~~licensed licensed~~

(b) through (c) Repealed by Session Laws 2001-297.

~~licensed licensed Social Work and Licensure~~

(d) No foreign or alien hospital or medical or dental service corporation as herein defined shall be authorized to do business in this State."

SECTION 18. G.S. 58-65-95(a) reads as rewritten:

"(a) ~~No corporation~~ Corporations subject to this Article shall invest in ~~any securities other than securities~~ or hold only those assets permitted by Article 7 of this Chapter for ~~the investment of assets of~~ life and health insurance companies."

SECTION 19. G.S. 58-67-5(i) reads as rewritten:

"(i) "Net worth" means the excess of total assets over the total liabilities and may include borrowed funds that are repayable only from the net earned income of the health maintenance organization and repayable only with the advance permission of the Commissioner. For the purposes of this subsection, "assets" means (i) tangible assets and (ii) other investments permitted under ~~G.S. 58-67-60; provided, however, that the~~

~~depreciated cost of office furniture and equipment in the principal office shall not exceed ten percent (10%) of a health maintenance organization's net worth.~~ G.S. 58-67-60."

SECTION 20. G.S. 58-67-40 is repealed.

SECTION 21. G.S. 58-67-110 reads as rewritten:

"**§ 58-67-110. Protection against insolvency.**

(a) The Commissioner shall require deposits in accordance with the provisions of G.S. 58-67-25.

(b) Each full service ~~medical~~ health maintenance organization shall maintain a minimum net worth ~~of not less than one million dollars ($1,000,000), which shall be increased by the amount of the contingency reserves calculated annually in accordance with the provisions of G.S. 58-67-40. The net worth calculation shall be computed in accordance with statutory accounting principles generally recognized in the regulation of health maintenance organizations and the Commissioner may promulgate such regulations as he deems appropriate to carry out the provisions of this section. If a health maintenance organization fails to comply with the net worth requirement of this subsection or subsections (c) or (d) of this section, the Commissioner is authorized to take appropriate action to assure that the continued operation of the health maintenance organization will not be hazardous to its enrollees.~~ equal to the greater of one million dollars ($1,000,000) or the amount required pursuant to the risk-based capital provisions of Article 12 of this Chapter. Each single service health maintenance organization shall maintain a minimum net worth equal to the greater of fifty thousand dollars ($50,000) or that amount required pursuant to the risk-based capital provisions of Article 12 of this Chapter.

~~(c) The minimum net worth for a health maintenance organization authorized to operate on July 17, 1987, and having a net worth of less than one million dollars ($1,000,000) shall be as follows:~~

~~(1) $150,000 by December 31, 1987~~
~~(2) $300,000 by December 31, 1988~~
~~(3) $450,000 by December 31, 1989~~
~~(4) $750,000 by December 31, 1990~~
~~(5) $1,000,000 by December 31, 1991~~

~~The net worth amounts required by this section shall be in addition to the contingency reserves required by G.S. 58-67-40.~~

~~(d) Notwithstanding any other provision of this Article, a health maintenance organization authorized to offer only a single health care service plan providing a single health care service must have a minimum net worth of fifty thousand dollars ($50,000). The minimum net worth for such plan authorized to operate on July 17, 1987, and having a net worth of less than fifty thousand dollars ($50,000) shall be as follows:~~

~~(1) Twenty-five thousand dollars ($25,000) by December 31, 1987; and~~
~~(2) Fifty thousand dollars ($50,000) by December 31, 1988;~~

~~The net worth amounts required by this section shall be in addition to the contingency reserves required by G.S. 58-67-40.~~

(e) Every full service medical health maintenance organization shall have and maintain at all times an adequate plan for protection against insolvency acceptable to the Commissioner. In determining the adequacy of such a plan, the Commissioner may consider:

(1) A reinsurance agreement preapproved by the Commissioner covering excess loss, stop loss, or catastrophes. The agreement must provide that the Commissioner will be notified no less than 60 days prior to cancellation or reduction of coverage.

(2) A conversion policy or policies that will be offered by an insurer to the enrollees in the event of the health maintenance organization's insolvency.

(3) Any other arrangements offering protection against insolvency that the Commissioner may require."

SECTION 22. G.S. 58-67-140(a)(3) reads as rewritten:

"(3) ~~No longer maintains the financial reserve specified in G.S. 58-67-40 or is~~ Is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees."

SECTION 23. G.S. 58-67-140(a)(7) reads as rewritten:

"(7) Has knowingly published or made to the Department or to the public any false statement or report, including any report or any data that serves as the basis for any report, required to be submitted under ~~G.S. 58-3-210.~~G.S. 58-3-191."

SECTION 24. G.S. 58-47-65(a) reads as rewritten:

"(a) No group shall self-insure its workers' compensation liabilities under the Act unless it is licensed by the Commissioner under this Part. This subsection does not apply to a group that was organized and approved under the North Carolina law before July 1, 1995, and whose authority to self-insure its workers' compensation liabilities under the Act has not terminated after that date."

SECTION 25. G.S. 97-170(a) reads as rewritten:

"(a) No employer shall self-insure its workers' compensation liabilities under the Act unless it is licensed by the Commissioner under this Article. This subsection does not apply to an employer authorized to self-insure its workers' compensation liabilities under the Act prior to December 1, 1997, whose authority to self-insure its workers' compensation liabilities under the Act has not terminated after that date."

SECTION 26.(a) G.S. 58-3-100 reads as rewritten:

"**§ 58-3-100. Insurance company licensing provisions.**

(a) The Commissioner may, after notice and opportunity for a hearing, revoke, suspend, ~~restrict, or refuse to renew~~ or restrict the license of any insurer if:

(1) The insurer fails or refuses to comply with any law, order or rule applicable to the insurer.

(2) The insurer's financial condition is unsound, or its assets above its liabilities, exclusive of capital, are less than the amount of its capital or required minimum surplus.

(3) The insurer has published or made to the Department or to the public any false statement or report.

(4) The insurer or any of the insurer's officers, directors, employees, or other representatives refuse to submit to any examination authorized by law or refuse to perform any legal obligation in relation to an examination.

(5) The insurer is found to make a practice of unduly engaging in litigation or of delaying the investigation of claims or the adjustment or payment of valid claims.

(b) Any suspension, revocation or refusal to renew suspension or revocation of an insurer's license under this section may also be made applicable to the license or registration of any individual regulated under this Chapter who is a party to any of the causes for licensing sanctions listed in subsection (a) of this section."

SECTION 26.(b) G.S. 58-4-15 reads as rewritten:

"**§ 58-4-15. Revocation or suspension of license.**

The Commissioner may ~~suspend, revoke, or refuse to renew~~ suspend or revoke the license of any insurer failing to file its financial statement when due or within any extension of time that the Commissioner, for good cause, may have granted."

SECTION 26.(c) G.S. 58-6-7 reads as rewritten:

"**§ 58-6-7. Licenses; perpetual licensing; annual license continuation ~~Annual license~~ fees for insurance companies.**

(a) In order to do business in this State, an insurance company shall apply for and obtain a license from the ~~Commissioner by March 1 of each year.~~ Commissioner. The license shall be perpetual and ~~become effective the following July 1 and shall remain in effect for one year.~~ shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with this Chapter and subject to any other applicable provision of the insurance laws of this State. Except as provided in subsection (b) of this section, the insurance company shall pay ~~an annual~~ a fee for each year the license is in effect, as follows:

For each domestic farmer's mutual assessment fire insurance company.....$ 25.00
For each fraternal order.....100.00
For each of all other insurance companies, except mutual burial associations taxed under G.S. 105-121.1.....1,000.00

The fees levied in this subsection are in addition to those specified in G.S. 58-6-5.

(b) When the paid-in capital stock or surplus, or both, of an insurance company, other than a farmer's mutual assessment company or a fraternal order, does not exceed one hundred thousand dollars ($100,000), the fee levied in this section shall be one-half the amount specified.

(c) Upon payment of the fee specified above and the fees and taxes elsewhere specified each insurance company, exchange, bureau, or agency, shall be entitled to do the types of business specified in Chapter 58, of the General Statutes of North Carolina as amended, to the extent authorized therein, except that: Insurance companies authorized to do either the types of business specified for (i) life insurance companies, or (ii) for fire and marine companies, or (iii) for casualty and fidelity and surety

companies, in G.S. 58-7-75, which shall also do the types of business authorized in one or both of the other of the above classifications shall in addition to the fees above specified pay one hundred dollars ($100.00) for each such additional classification of business done. All fees and charges collected by the Commissioner under this Chapter are nonrefundable.

(d) Any rating bureau established by action of the General Assembly of North Carolina shall be exempt from the fees in this section."

SECTION 26.(d) G.S. 58-6-15 reads as rewritten:

"**§ 58-6-15. ~~Licenses run from July 1.~~ Annual license continuation fee definition; requirements.**

~~The license required of insurance companies shall continue, continue for the next ensuing 12 months after July 1 of each year, unless revoked as provided in Articles 1 through 64 of this Chapter. Application for renewal of the company license~~ For purposes of this Chapter only, "annual license continuation fee means" the fee specified in G.S. 58-6-7 submitted to the Commissioner for each year the license is in effect after the company's year of initial licensing. The annual license continuation fee must be submitted on or before the first day of March on a form to be supplied by the ~~Commissioner.~~ Commissioner each year the license is to remain in effect. If the Commissioner is satisfied ~~Upon satisfying himself~~ that the company has met all requirements of law and appears to be financially ~~solvent he shall forward the renewal license to the company. Any company which does not qualify for a renewal license before July 1 shall cease to do business in the State of North Carolina as of July 1, unless its license is sooner revoked by the Commissioner.~~ solvent, the Commissioner shall not revoke or suspend the license of the company, and the company shall be authorized to do business in this State, subject to all other applicable provisions of the insurance laws of this State. Nothing contained in this section shall be interpreted as applying to licenses issued to individual representatives of insurance companies."

SECTION 26.(e) G.S. 58-6-30 reads as rewritten:

"**§ 58-15-30. License, surplus, and deposit requirements.**

(a) No reciprocal shall engage in any insurance transaction in this State until it has obtained a license to do so in accordance with the applicable provisions of Articles 1 through 64 of this Chapter. ~~Such~~The license shall continue in full force and effect, subject to timely payment of an annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State.~~expire on the last day of June of each year.~~

(b) No domestic or foreign reciprocal shall be licensed in this State unless it has a surplus to policyholders of at least eight hundred thousand dollars ($800,000); and no alien reciprocal shall be licensed unless it has a trusteed surplus of at least eight hundred thousand dollars ($800,000).

(c) Each domestic, foreign, or alien reciprocal licensed in this State must maintain a minimum deposit with the Commissioner of at least one hundred thousand dollars ($100,000) in cash or in value of securities of the kind specified in G.S. 58-5-15, which shall be subject to the same conditions as contained in Article 5 of this Chapter."

SECTION 26.(f) G.S. 58-19-65 reads as rewritten:

"**§ 58-19-65. ~~Revocation, suspension, or nonrenewal~~ Revocation or suspension of insurer's license.**

Whenever it appears to the Commissioner that any person has committed a violation of this Article that makes the continued operation of an insurer contrary to the interests of policyholders or the public, the Commissioner may, after giving notice and an opportunity to be heard, ~~suspend, revoke, or refuse to renew~~ suspend or revoke such insurer's license to do business in this State for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law."

SECTION 26.(g) G.S. 58-24-130 reads as rewritten:

"**§ 58-24-130. ~~Annual~~ Perpetual license.**

~~Societies which are now authorized to transact business in this State may continue such business until the 30th day of June next succeeding January 1, 1988. The authority of such societies and all societies hereafter licensed, may thereafter be renewed annually, but in all cases to terminate on the 30th day of the succeeding June. However, a license so issued~~ Subject to timely payment of the annual license continuation fee and subject to any other applicable provisions of the insurance laws of this State, a license, other than a preliminary license, to a fraternal benefit society under this Article shall continue in full force and ~~effect until the new license be issued or specifically refused.~~ effect. For each ~~such~~ license ~~or renewal~~ the society shall pay the Commissioner the fee specified in G.S. 58-6-5. The society shall pay the Commissioner, as an annual license continuation fee and a condition of the continuation of the license, the fee specified in G.S. 58-6-7 on or before the first day of March on a form to be supplied by the Commissioner. A duly certified copy or duplicate of ~~such~~the license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of Articles 1 through 64 of this Chapter."

SECTION 26.(h) G.S. 58-26-10 reads as rewritten:

"**§ 58-26-10. Financial statements and licenses required.**

Title insurance companies are subject to G.S. 58-2-131, 58-2-132, 58-2-133, 58-2-134, 58-2-165, 58-2-180, and 58-6-5. The Commissioner may require title insurance companies to separately report their experience in insuring titles and in insuring closing services. The license to do business in this State issued to a title insurance company shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State. The Commissioner shall annually license ~~such companies and their agents.~~ the agents of title insurance companies."

SECTION 26.(i) G.S. 58-30-62 reads as rewritten:

"**§ 58-30-62. Administrative supervision of insurers.**

(a) As used in this section, an insurer has "exceeded its powers" when it: has refused to permit examination of its books, papers, accounts, records or affairs by the Commissioner; has in violation of G.S. 58-7-50 removed from this State books, papers, accounts or records necessary for an examination of the insurer; has failed to comply promptly with applicable financial reporting statutes or rules and related Department

requests; continues to transact the business of insurance after its license has been ~~revoked, suspended, or not renewed~~ revoked or suspended by the Commissioner; by contract or otherwise, has unlawfully, or has in violation of an order of the Commissioner, or has without first having obtained any legally required written approval of the Commissioner, totally reinsured its entire outstanding business or merged or consolidated substantially its entire property or business with another insurer; has engaged in any transaction in which it is not authorized to engage under the laws of this State; has not complied with G.S. 58-7-73; or has refused to comply with a lawful order of the Commissioner. As used in this section, "Commissioner" includes an authorized representative or designee of the Commissioner."

SECTION 26.(j) G.S. 58-65-55 reads as rewritten:

"**§ 58-65-55. Issuance ~~of certificate.~~ and continuation of license.**

(a) Before issuing or continuing any such license or certificate the Commissioner may make such an examination or investigation as the Commissioner deems expedient. The Commissioner shall issue a ~~certificate of authority or~~ license upon the payment of ~~an annual~~ a fee of one thousand dollars ($1,000) and upon being satisfied on the following points:

(1) The applicant is established as a bona fide nonprofit hospital service corporation as defined by this Article and Article 66 of this Chapter.

(2) The rates charged and benefits to be provided are fair and reasonable.

(3) The amounts provided as working capital of the corporation are repayable only out of earned income in excess of amounts paid and payable for operating expenses and hospital and medical and/or dental expenses and such reserve as the Department deems adequate, as provided hereinafter.

(4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the certificate.

(b) The license shall continue in full force and effect, subject to payment of an annual license continuation fee of one thousand dollars ($1,000), subject to all other provisions of subsection (a) of this section and subject to any other applicable provisions of the insurance laws of this State."

SECTION 26.(k) G.S. 58-65-125 reads as rewritten:

"**§ 58-65-125. ~~Revocation, suspension, and refusal to renew~~ Revocation and suspension of license; unfair trade practices.**

(a) The Commissioner may ~~revoke, suspend, or refuse to renew~~revoke or suspend the license of any service corporation if:

(1) The service corporation fails or refuses to comply with any law, order, or rule applicable to the service corporation.

(2) The service corporation's financial condition is unsound.

(3) The service corporation has published or made to the Department or to the public any false statement or report.

(4) The service corporation refuses to submit to any examination authorized by law.

(5) The service corporation is found to make a practice of unduly engaging in litigation or of delaying the investigation of claims or the adjustment or payment of valid claims.

(b) Any ~~suspension, revocation, or refusal to renew~~ suspension or revocation of a service corporation's license under this section may also be made applicable to the license or registration of any natural person regulated under this Chapter who is a party to any of the causes for licensing sanctions listed in subsection (a) of this section.

(c) Article 63 of this Chapter applies to service corporations and their agents and representatives."

SECTION 26.(l) G.S. 58-67-140 reads as rewritten:

"**§ 58-67-140. Suspension or revocation of license.**

(a) The Commissioner may ~~suspend, revoke, or refuse to renew~~ suspend or revoke an HMO license if the Commissioner finds that the HMO:

(1) Is operating significantly in contravention of its basic organizational document, or in a manner contrary to that described in and reasonably inferred from any other information submitted under G.S. 58-67-10, unless amendments to such submissions have been filed with and approved by the Commissioner.

(2) Issues evidences of coverage or uses a schedule of premiums for health care services that do not comply with G.S. 58-67-50.

(3) No longer maintains the financial reserve specified in G.S. 58-67-40 or is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.

(4) Has itself or through any person on its behalf advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner.

(5) Is operating in a manner that would be hazardous to its enrollees.

(6) Knowingly or repeatedly fails or refuses to comply with any law or rule applicable to the HMO or with any order issued by the Commissioner after notice and opportunity for a hearing.

(7) Has knowingly published or made to the Department or to the public any false statement or report, including any report or any data that serves as the basis for any report, required to be submitted under G.S. 58-3-210."

SECTION 26.(m) G.S. 58-67-160 reads as rewritten:

"**§ 58-67-160. Fees.**

Every health maintenance organization subject to this Article shall pay to the Commissioner a fee of two hundred fifty dollars ($250.00) for filing an application for a license and ~~a~~ an annual license continuation fee of one thousand dollars ($1,000) for each ~~license renewal.~~ license. The license shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State."

SECTION 26.(n) G.S. 58-67-20 reads as rewritten:

"**§ 58-67-20. Issuance ~~of certificate.~~ and continuation of license.**

(a) Before issuing or continuing any such ~~certificate,~~ license, the Commissioner of Insurance may make such an examination or investigation as he deems expedient. The Commissioner of Insurance shall issue a ~~certificate of authority~~ license upon the payment of the application fee prescribed in G.S. 58-67-160 and upon being satisfied on the following points:

(1) The applicant is established as a bona fide health maintenance organization as defined by this Article;

(2) The rates charged and benefits to be provided are fair and reasonable;

(3) The amounts provided as working capital are repayable only out of earned income in excess of amounts paid and payable for operating expenses and expenses of providing services and such reserve as the Department of Insurance deems adequate, as provided hereinafter;

(4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the ~~certificate~~ license and that the health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. Such working capital shall initially be a minimum of one million five hundred thousand dollars ($1,500,000) for any full service medical health maintenance organization. Initial working capital for a single service health maintenance organization shall be a minimum of one hundred thousand dollars ($100,000) or such higher amount as the Commissioner shall determine to be adequate.

(b) In making the determinations required under this section, the Commissioner shall consider:

(1) The financial soundness of the health care plan's arrangements for health care services and the schedule of premiums used in connection therewith;

(2) The adequacy of working capital;

(3) Any agreement with an insurer, a hospital or medical service corporation, a government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of alternative coverage in the event of discontinuance of the plan;

(4) Any agreement with providers for the provision of health care services; and

(5) Any firm commitment of federal funds to the health maintenance organization in the form of a grant, even though such funds have not been paid to the health maintenance organization, provided that the health maintenance organization certifies to the Commissioner that such funds have been committed, that such funds are to be paid to the

health maintenance organization with a current fiscal year and that such funds may be used directly for operating purposes and for the benefit of enrollees of the health maintenance organization.

(c) A ~~certificate of authority~~ license shall be denied only after compliance with the requirements of G.S. 58-67-155."

SECTION 27. Article 31 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-31-66. Public construction contract surety bonds.**

(a) Neither the State nor any county, city, or other political subdivision of the State, or any officer, employee, or other person acting on behalf of any such entity shall, with respect to any public building or construction contract, require any contractor, bidder, or proposer to procure a bid bond, payment bond, or performance bond from a particular surety, agent, producer, or broker.

(b) Nothing in this section prohibits an officer or employee acting on behalf of the State or a county, city, or other political subdivision of the State from:

(1) Approving the form, sufficiency, or manner of execution of the surety bonds furnished by the surety selected by the bidder to underwrite the bonds.

(2) Disapproving, on a reasonable, nondiscriminatory basis, the surety selected by the bidder to underwrite the bonds of the financial condition of the surety.

(c) A violation of this section renders the public building or construction contract void ab initio."

SECTION 28. Sections 26(a) through (n) become effective January 1, 2004, and apply to all company licenses issued or otherwise eligible for renewal or continuation after that date. The remainder of this act becomes effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 560

Committee Substitute Favorable 4/17/03

Short Title: Disapprove Certain Life Insurance Rules. (Public)

Sponsors:

Referred to:

March 19, 2003

A BILL TO BE ENTITLED

AN ACT TO DISAPPROVE THE ADMINISTRATIVE RULES GOVERNING LIFE INSURANCE REPLACEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Pursuant to G.S. 150B-21.3(b), the following Life Insurance Replacement Rules that were adopted by the Department of Insurance and approved by the Rules Review Commission on December 19, 2002, are disapproved:

(1) 11 NCAC 12.0601 – Purpose and Scope.
(2) 11 NCAC 12.0602 – Definition of Replacement.
(3) 11 NCAC 12.0603 – Other Definitions.
(4) 11 NCAC 12.0604 – Exemptions.
(5) 11 NCAC 12.0605 – Duties of Producers.
(6) 11 NCAC 12.0606 – Duties of Existing Insurer.
(7) 11 NCAC 12.0607 – Duties of Insurers That Use Producers.
(8) 11 NCAC 12.0608 – Duties of Insurers With Respect to Direct Response Sales.
(9) 11 NCAC 12.0609 – Violations and Penalties.
(10) 11 NCAC 12.0611 – Notice Regarding Replacement.
(11) 11 NCAC 12.0612 – Duties of Replacing Insurers That Use Producers.

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 560:
Diapprove Certain Life Insurance Rules

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Reps. Holliman and Setzer
Date:	May 23, 2003	**Summary by:**	Kory J. Goldsmith
Version:	2nd Edition		Committee Counsel

SUMMARY: HB560 disapproves certain life insurance rules proposed by the Department of Insurance. If the rules are not disapproved, they will become effective when the General Assembly adjourns. The act is effective when it becomes law.

BILL ANALYSIS:

Section 1 would disapprove all the life insurance replacement rules sought by the Department of Insurance and approved by the rules Review Commission on December 19, 2002.

BACKGROUND: According to information provided by the Department of Insurance, HB560 is intended to disapprove certain life insurance replacement rules that the Department initially requested and the rules Review Commission approved on December 19, 2002. Life insurance replacement refers to the practice of replacing an existing life insurance policy with a new policy or cashing in an existing policy to purchase a new policy. These rules were being requested so that the Department's rules would reject the most recent changes to the life insurance replacement rules adopted by the National Association of Insurance Commissioners. The new rules for included notice forms that were required to be used by the agent as part of the process for replacing a policyholder's existing policy. The forms are designed to notify the policyholder of the potential consequences of the replacement. Under the proposed rules, if the agent used the form in the rules, no prior approval of the form would be required. Otherwise, the form would have to be submitted to the Department for its review ad approval.

During the rule approval process, two words were removed from on of the proposed forms. The consequence of altering the "uniform" form was that if the rules went into effect, the industry would have to submit its forms for pre-approval by the Department and the Department would have to review each submitted form. The result would be costly to the industry and the Department.

Under the existing rules, a sample form may be obtained from the Department. The Department and industry have agreed that it is better to use the existing rules and apply for new rules using the corrected form.

H560-SMRC-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 829*

Short Title:	Annuity Nonforfeiture Rate Change.	(Public)
Sponsors:	Representatives Holliman and Setzer (Primary Sponsors).	
Referred to:	Insurance.	

April 2, 2003

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE NAIC MODEL STANDARD NONFORFEITURE LAW FOR INDIVIDUAL DEFERRED ANNUITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 58 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-58-61. Standard nonforfeiture law for individual deferred annuities.**

(a) Title. – This section is and may be cited as the Standard Nonforfeiture Law for Individual Deferred Annuities.

(b) Applicability. – This section does not apply to any:

(1) Reinsurance.

(2) Group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as amended.

(3) Premium deposit fund.

(4) Variable annuity.

(5) Investment annuity.

(6) Immediate annuity.

(7) Deferred annuity contract after annuity payments have commenced.

(8) Reversionary annuity.

(9) Contract delivered outside this State through an agent or other representative of the company issuing the contract.

(c) Nonforfeiture Requirements. – In the case of contracts issued on or after the operative date of this section as defined in subsection (o) of this section, no contract of annuity, except as stated in subsection (b) of this section, shall be delivered or issued for delivery in this State unless it contains in substance the following provisions, or

corresponding provisions that in the opinion of the Commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) That upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of the value specified in subsections (g), (h), (i), (j), and (l) of this section.

(2) If a contract provides for a lump sum settlement at maturity or at any other time, that upon surrender of the contract at or before the commencement of any annuity payments, the company shall pay in lieu of a paid-up annuity benefit a cash surrender benefit of the amount specified in subsections (g), (h), (j), and (l) of this section. The company may reserve the right to defer the payment of the cash surrender benefit for a period not to exceed six months after demand for the payment with surrender of the contract after making written request and receiving written approval of the Commissioner. The request shall address the necessity and equitability to all policyholders of the deferral.

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of the benefits.

(4) A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which the benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this subsection, a deferred annuity contract may provide that if no considerations have been received under the contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from prior considerations paid would be less than twenty dollars ($20.00) monthly, the company may at its option terminate the contract by payment in cash of the then-present value of the portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by this payment shall be relieved of any further obligation under the contract.

(d) Minimum Values. – The minimum values specified in subsections (g), (h), (i), (j), and (l) of this section of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section. The minimum nonforfeiture amount at any time at or

before the commencement of any annuity payments shall be equal to an accumulation up to that time at rates of interest as indicated in subsection (e) of this section of the net considerations, as hereinafter defined, paid before that time, decreased by the sum of the following:

(1) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in subsection (e) of this section.

(2) An annual contract charge of fifty dollars ($50.00), accumulated at rates of interest as indicated in subsection (e) of this section.

(3) Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in subsection (e) of this section.

(4) The amount of any indebtedness to the company on the contract, including interest due and accrued.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent (87 1/2%) of the gross considerations credited to the contract during that contract year.

(e) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent (3%) per annum and the following, which shall be specified in the contract if the interest rate will be reset:

(1) The five-year Constant Maturity Treasury Rate reported by the Federal Reserve as of a date, or average over a period, rounded to the nearest one-twentieth of one percent (0.05%), specified in the contract no longer than 15 months before the contract issue date or redetermination date under subdivision (4) of this subsection.

(2) Reduced by 125 basis points.

(3) Where the resulting interest guarantee is not less than one percent (1%).

(4) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year Constant Maturity Treasury Rate to be used at each redetermination date.

(f) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subdivision (e)(2) of this section by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each subsequent redetermination date, of the additional reduction shall not exceed the market value of the benefit. The Commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Absent a demonstration that is acceptable to the Commissioner, the Commissioner may disallow or limit the additional reduction. The Commissioner may adopt rules to implement the provisions of this subsection and to provide for further adjustments to the calculation of

minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts for which the Commissioner determines adjustments are justified.

(g) Computation of Present Value. – Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Present value shall be computed using the mortality table, if any, and the interest rates specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

(h) Calculation of Cash Surrender Value. – For contracts that provide cash surrender benefits, the cash surrender benefits available before maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit that would be provided under the contract at maturity arising from considerations paid before the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent (1%) higher than the interest rate specified in the contract for accumulating the net considerations to determine maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

(i) Calculation of Paid-Up Annuity Benefits. – For contracts that do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time before maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid before the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, the present value being calculated for the period before the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine maturity value, and increased by any additional amounts credited by the company to the contract. For contracts that do not provide any death benefits before the commencement of any annuity payments, present values shall be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

(j) Maturity Date. – For the purpose of determining the benefits calculated under subsections (h) and (i) of this section, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be the latest date for which election is permitted by the contract but not later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

(k) Disclosure of Limited Death Benefits. – A contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount before the commencement of any annuity payments shall include a statement in a prominent place in the contract that those benefits are not provided.

(l) Inclusion of Lapse of Time Considerations. – Any paid-up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

(m) Proration of Values; Additional Benefits. – For a contract that provides within the same contract, by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (g), (h), (i), (j), and (l) of this section, additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this section. The inclusion of those benefits shall not be required in any paid-up benefits, unless the additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits.

(n) Rules. – The Commissioner may adopt rules to implement the provisions of this section.

(o) Effective Date. – On and after October 1, 2003, a company may elect to apply the provisions of this section to annuity contracts on a contract form-by-contract form basis before October 1, 2004. In all other instances, this section shall become operative with respect to annuity contracts issued by the company on and after October 1, 2004."

SECTION 2. G.S. 58-58-60 is repealed.

SECTION 3. G.S. 58-7-95(s) reads as rewritten:

"(s) Except for ~~G.S. 58-58-60~~ G.S. 58-58-61 and G.S. 58-58-120 in the case of a variable annuity ~~contract and~~ contract, G.S. 58-58-55, 58-58-120, and 58-58-140(1) in the case of a variable life insurance ~~policy~~ policy, and except as otherwise provided in this section, all pertinent provisions of ~~the insurance laws of this State shall~~ this Chapter apply to separate accounts and contracts issued in connection ~~therewith.~~ with separate accounts. Any individual variable life insurance contract, delivered or issued for delivery within this State, shall contain reinstatement and nonforfeiture provisions appropriate to ~~such a~~ that contract. Any group variable life insurance contract, delivered or issued for delivery within this State, shall contain grace provisions appropriate to ~~such a~~ that contract. Any individual variable annuity contract, delivered or issued for

delivery within this State, shall contain reinstatement provisions appropriate to ~~such a~~ that contract."

SECTION 4. Sections 2 and 3 of this act become effective October 1, 2004. The remainder of this act becomes effective October 1, 2003.

ANNUITY NONFORFEITURE RATE CHANGE

A deferred annuity is a contract that accumulates a sum of money over time, with the intent of providing installment payments at some point in the future. A person can buy this contract by making a lump sum payment up front, by making payments over time, or through some combination of these two methods of payment. In return, the insurance company invests the money and credits interest to this contract. The nonforfeiture value is the value of an insurance policy or annuity contract if it is cancelled or required premium payments are not paid. The nonforfeiture value also comes into play if an annuity is prematurely surrendered or if the annuity holder dies before the payments begin. In all of these circumstances, the law guarantees a minimum interest rate to the contract holder.

North Carolina's law (N.C. General Statute §58-58-60) is based on a model act of the National Association of Insurance Commissioners (NAIC). When it was enacted in 1979, interest rates were relatively high and expected to remain so (one year rates were between 9.6% and 12.44%). Interest rates throughout the economy have declined significantly in recent years and will probably remain low for many years to come. The Federal Reserve Board lowered interest rates eleven times in one year.

During 1979, the year in which North Carolina's 3% nonforfeiture rate was enacted, the Five-Year Constant Treasury Rate ranged from 9.06 to 10.21%. The "One Year Constant Treasury Rate" ranged from 9.57 to 12.44%. Thus, a 3% minimum, which was never expected by anyone to be reached, let alone breached, was considered a fair "floor" for rates; especially considering that insurer expenses require additional margin over earned rates. During 2000, rates for the Five-Year Constant Treasury Rate began at 6.58%; in late 2001 they fell to 3.91%; in March 2002, the rate was 4.74%. The One-Year Constant Treasury Rate was 6.12% in January 2000, and fell to 2.16% in January 2002. In March, it was 2.57%.

The minimum guaranteed interest rate of 3% under prior law was high in light of very low interest rates in the economy. Insurers believed it might become possible that they simply could not obtain high enough yields on their own investments, pay for selling and administrative expenses, and still guarantee to pay consumers at least 3%.

In 2002 the General Assembly reduced the statutory minimum guaranteed rate from 3% to 1 ½%. This was based on a recommendation by the industry and the NAIC. It was hoped that this change would result in insurers offering more deferred annuity products to consumers because insurers could be able to more closely match reduced payments to consumers with their own reduced returns on investments. This was intended to be a stopgap measure while the industry and the NAIC developed an interest rate index to be put into the model act. On March 7, 2003, the NAIC adopted the index to determine the minimum nonforfeiture rate. The result of the index calculation is then compared with a 3% nonforfeiture rate, and the lesser of them is used, with an absolute minimum interest rate of 1%. A large number of states changed the fixed rate from 3% to 1.5% last year. States are now beginning to put this interest rate index into their laws to replace the fixed interest rate.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 357

Committee Substitute Favorable 4/15/03

Short Title: No Credit Card Number on Receipts. (Public)

Sponsors:

Referred to:

March 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT A PERSON THAT ACCEPTS CREDIT, CHARGE, OR DEBIT CARDS FOR THE TRANSACTION OF BUSINESS FROM PRINTING MORE THAN FIVE DIGITS OF A CREDIT, CHARGE, OR DEBIT CARD ACCOUNT NUMBER OR AN EXPIRATION DATE ON A SALES RECEIPT AND TO PROHIBIT A PERSON FROM SELLING A CASH REGISTER OR OTHER MACHINE OR DEVICE THAT ELECTRONICALLY PRINTS RECEIPTS OF CREDIT, CHARGE, OR DEBIT CARD TRANSACTIONS THAT CANNOT BE PROGRAMMED OR OPERATED TO PRODUCE A RECEIPT WITH FIVE OR FEWER DIGITS OF THE CREDIT, CHARGE, OR DEBIT CARD ACCOUNT NUMBER AND NO EXPIRATION DATE PRINTED ON THE RECEIPT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19C of Chapter 14 of the General Statutes is amended by adding two new sections to read:

"**§ 14-113.24. Credit, charge, or debit card numbers on receipts.**

(a) For purposes of this section, the word 'person' means the person that owns or leases the cash register or other machine or device that electronically prints receipts of credit, charge, or debit card transactions.

(b) Except as provided in this section, no person that accepts credit, charge, or debit cards for the transaction of business shall print more than five digits of the credit, charge, or debit card account number or the expiration date upon any receipt with the intent to provide the receipt to the cardholder at the point of sale. This section applies to a person who employs a cash register or other machine or device that electronically prints receipts for credit, charge, or debit card transactions that is first used on or after March 1, 2004. This section does not apply to a person whose sole means of recording a credit, charge, or debit card number for the transaction of business is by handwriting or by an imprint or copy of the credit, charge, or debit card.

(c) A person who violates this section commits an infraction as defined in G.S. 14-3.1 and is subject to a penalty of up to five hundred dollars ($500.00) per violation, not to exceed five hundred dollars ($500.00) in any calendar month or two thousand dollars ($2,000) in any calendar year. A person who receives a citation for violation of this section is not subject to the penalty provided in this subsection if the person establishes in court that the person came into compliance with this section within 30 days of the issuance of the citation and the person has remained in compliance with this section.

"**§ 14-113.25. Sale of certain cash registers and other receipt printing machines.**

(a) No person shall sell or offer to sell a cash register or other machine or device that electronically prints receipts of credit, charge, or debit card transactions that cannot be programmed or operated to produce a receipt with five or fewer digits of the credit, charge, or debit card account number and no expiration date printed on the receipt.

(b) A person who violates this section commits an infraction as defined in G.S. 14-3.1 and is subject to a penalty of up to five hundred dollars ($500.00) per violation. For purposes of assessing penalties pursuant to this subsection, the sale or offer for sale of each individual cash register or other machine or device that electronically prints receipts of credit, charge, or debit card transactions in violation of this section is treated as a separate violation."

SECTION 2. G.S. 14-113.24(b) reads as rewritten:

"(b) Except as provided in this section, no person that accepts credit, charge, or debit cards for the transaction of business shall print more than five digits of the credit, charge, or debit card account number or the expiration date upon any receipt with the intent to provide the receipt to the cardholder at the point of sale. This section applies to a person who employs a cash register or other machine or device that electronically prints receipts for credit, charge, or debit card ~~transactions that is first used on or after March 1, 2004.~~transactions. This section does not apply to a person whose sole means of recording a credit, charge, or debit card number for the transaction of business is by handwriting or by an imprint or copy of the credit, charge, or debit card."

SECTION 3. G.S. 14-113.22(b) reads as rewritten:

"(b) Notwithstanding subsection (a), (a1), or (a2) of this section, any person who commits an act made unlawful by ~~this Article~~G.S. 14-113.20 or G.S. 14-113.20A may also be liable for damages under G.S. 1-539.2C."

SECTION 4. Sections 1, 3, and 4 of this act become effective March 1, 2004. Section 2 of this act becomes effective July 1, 2005.

HOUSE BILL 357:
No Credit Card Number on Receipts.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Barnhart
Date:	May 27, 2003	**Summary by:**	Karen Cochrane Brown
Version:	Second Edition		Committee Co-Counsel

SUMMARY: ***House Bill 357 would prohibit a person that accepts credit cards for the transaction of business from printing more than five digits of a credit card number or an expiration date on a sales receipt and would prohibit a person from selling a cash register or other machine that prints receipts for credit card transactions that cannot be operated to produce a receipt with five or fewer digits of the credit card account number and no expiration date.***

BILL ANALYSIS:

Sections 1 and 2 of the bill would create two new statutes in the Financial Identity Fraud Article of Chapter 14 of the General Statutes.

New G.S. 14-113.24 (Credit, charge, or debit card numbers on receipts) would prohibit a person that accepts credit, charge, or debit cards for the transaction of business from printing more than five digits of the card account number or the expiration date on a sales receipt. This prohibition applies to the person that owns or leases the cash register or other machine or device that electronically prints the receipts. This prohibition does not apply to a person that only records credit, charge, or debit card transactions by handwriting or an imprint or copy of the card.

Penalty: A person who violates this prohibition commits an infraction and is subject to a penalty of up to $500 per violation, not to exceed $500 in any calendar month or $2,000 in any calendar year. A person may avoid penalties assessed for a violation of this prohibition if the person comes into compliance with the new statute within 30 days of receiving a citation and remains in compliance.

Phase-in: Effective March 1, 2004, this prohibition applies to the use of receipt printing devices that are first put into use on or after March 1, 2004. Section 2 provides that, effective July 1, 2005, this prohibition applies to the use of all receipt printing devices regardless of when they were first put into use.

New G.S. 14-113.25 (Sale of certain cash registers and other receipt printing machines) would prohibit a person from selling a cash register or other machine or device that electronically prints receipts of credit, charge, or debit card transactions that cannot be operated to produce a receipt with five or fewer digits of the card account number and no expiration date printed on the receipt.

Penalty: A person who violates this prohibition commits an infraction and is subject to a penalty of up to $500 per violation. For purposes of determining the amount of the penalty, the sale of each individual cash register or other machine or device that electronically prints receipts of credit, charge, or debit card transactions in violation of this statute is treated as a separate violation.

Section 3 of the bill would make a conforming change to the punishment and liability statute of the Financial Identity Fraud Article to prevent certain general remedies in the Article from applying to violations of the new credit card receipt and sale of cash registers statutes. Section 3 would become effective March 1, 2004.

Jeff Hudson, Counsel to the House Judiciary II Committee, is the original author of this summary.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 357 DATE 5/27/03

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Ronald Ballantine
Sen.)

1 moves to amend the bill on page 2, line 13
2 ( ) WHICH CHANGES THE TITLE
3 by adding the following at the end of the line:
4
5 " This subsection applies to cash registers or other
6 machines or devices sold or offered for sale for use
7 in the ordinary course of business in this State."
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SIGNED Ronald J Ballantine

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 357

Committee Substitute Favorable 4/15/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H357-PCS60358-RO-21

Short Title: No Credit Card Number on Receipts. (Public)

Sponsors:

Referred to:

March 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT A PERSON THAT ACCEPTS CREDIT, CHARGE, OR DEBIT CARDS FOR THE TRANSACTION OF BUSINESS FROM PRINTING MORE THAN FIVE DIGITS OF A CREDIT, CHARGE, OR DEBIT CARD ACCOUNT NUMBER OR AN EXPIRATION DATE ON A SALES RECEIPT AND TO PROHIBIT A PERSON FROM SELLING A CASH REGISTER OR OTHER MACHINE OR DEVICE THAT ELECTRONICALLY PRINTS RECEIPTS OF CREDIT, CHARGE, OR DEBIT CARD TRANSACTIONS THAT CANNOT BE PROGRAMMED OR OPERATED TO PRODUCE A RECEIPT WITH FIVE OR FEWER DIGITS OF THE CREDIT, CHARGE, OR DEBIT CARD ACCOUNT NUMBER AND NO EXPIRATION DATE PRINTED ON THE RECEIPT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 19C of Chapter 14 of the General Statutes is amended by adding two new sections to read:

"**§ 14-113.24. Credit, charge, or debit card numbers on receipts.**

(a) For purposes of this section, the word 'person' means the person that owns or leases the cash register or other machine or device that electronically prints receipts of credit, charge, or debit card transactions.

(b) Except as provided in this section, no person that accepts credit, charge, or debit cards for the transaction of business shall print more than five digits of the credit, charge, or debit card account number or the expiration date upon any receipt with the intent to provide the receipt to the cardholder at the point of sale. This section applies to a person who employs a cash register or other machine or device that electronically prints receipts for credit, charge, or debit card transactions that is first used on or after March 1, 2004. This section does not apply to a person whose sole means of recording a

credit, charge, or debit card number for the transaction of business is by handwriting or by an imprint or copy of the credit, charge, or debit card.

(c) A person who violates this section commits an infraction as defined in G.S. 14-3.1 and is subject to a penalty of up to five hundred dollars ($500.00) per violation, not to exceed five hundred dollars ($500.00) in any calendar month or two thousand dollars ($2,000) in any calendar year. A person who receives a citation for violation of this section is not subject to the penalty provided in this subsection if the person establishes in court that the person came into compliance with this section within 30 days of the issuance of the citation and the person has remained in compliance with this section.

"**§ 14-113.25. Sale of certain cash registers and other receipt printing machines.**

(a) No person shall sell or offer to sell a cash register or other machine or device that electronically prints receipts of credit, charge, or debit card transactions that cannot be programmed or operated to produce a receipt with five or fewer digits of the credit, charge, or debit card account number and no expiration date printed on the receipt. This subsection applies to cash registers or other machines or devices sold or offered for sale for use in the ordinary course of business in this State.

(b) A person who violates this section commits an infraction as defined in G.S. 14-3.1 and is subject to a penalty of up to five hundred dollars ($500.00) per violation. For purposes of assessing penalties pursuant to this subsection, the sale or offer for sale of each individual cash register or other machine or device that electronically prints receipts of credit, charge, or debit card transactions in violation of this section is treated as a separate violation."

SECTION 2. G.S. 14-113.24(b) reads as rewritten:

"(b) Except as provided in this section, no person that accepts credit, charge, or debit cards for the transaction of business shall print more than five digits of the credit, charge, or debit card account number or the expiration date upon any receipt with the intent to provide the receipt to the cardholder at the point of sale. This section applies to a person who employs a cash register or other machine or device that electronically prints receipts for credit, charge, or debit card ~~transactions that is first used on or after March 1, 2004.~~transactions. This section does not apply to a person whose sole means of recording a credit, charge, or debit card number for the transaction of business is by handwriting or by an imprint or copy of the credit, charge, or debit card."

SECTION 3. G.S. 14-113.22(b) reads as rewritten:

"(b) Notwithstanding subsection (a), (a1), or (a2) of this section, any person who commits an act made unlawful by ~~this Article~~G.S. 14-113.20 or G.S. 14-113.20A may also be liable for damages under G.S. 1-539.2C."

SECTION 4. Sections 1, 3, and 4 of this act become effective March 1, 2004. Section 2 of this act becomes effective July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 609
Committee Substitute Favorable 4/8/03

Short Title: Enhance Amusement Device Safety. (Public)

Sponsors:

Referred to:

March 24, 2003

A BILL TO BE ENTITLED

AN ACT TO ENHANCE LAWS PERTAINING TO THE AMUSEMENT DEVICE SAFETY ACT OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-111.2(b) reads as rewritten:

"(b) This Article shall not apply to any device which does not normally require the supervision or services of an operator. ~~Unless they are located in an amusement park or carnival area, the following devices or attractions are exempt from this Article:~~

~~(1) Hot or cold air inflatable devices;~~

~~(2) Bumper boats; and~~

~~(3) Simulator devices that simulate the movement shown on various video tapes.~~"

SECTION 2. G.S. 95-111.5(b) reads as rewritten:

"(b) An owner of a device subject to the provisions of this Article, or his authorized agent, is hereby required to maintain for at least ~~30 days~~ the previous 12 months a signed record of the required pre-opening inspection and test and such other pertinent information as the Commissioner may require by rule or regulation."

SECTION 3. G.S. 95-111.8 reads as rewritten:

"**§ 95-111.8. Location notice.**

No person shall operate for the public or permit the operation for the public any device subject to the provisions of this Article after initial assembly or after reassembly at any location within this State without first notifying the Commissioner of the intention to operate for the public. Written notice of a planned schedule of operation or use shall be received at least ~~five~~ 10 days prior to the first planned date of operation or use. ~~Notice of unscheduled use shall be given immediately to the Commissioner by telephone or telegraph.~~"

SECTION 4. G.S. 95-111.11 reads as rewritten:

"**§ 95-111.11. Operators.**

(a) Any operator of a device subject to the provisions of this Article shall be at least 18 years of age. An operator shall operate no more than one device at any given time. An operator shall be in attendance at all times the device is in operation.

(b) No person shall operate any amusement device equipment while under the influence of alcohol or any other impairing substance as defined by G.S. 20-4.01(14a). It shall be a violation of this subsection to knowingly permit the operation of any amusement device while the operator is under the influence of an impairing substance."

SECTION 5. G.S. 95-111.13 reads as rewritten:

"**§ 95-111.13. Violations; civil penalties; appeal.**

(a) Any person who violates G.S. 95-111.7(a) or (b) (Operation without certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars ($250.00) for each day each device is so operated or used.

(b) Any person who violates G.S. 95-111.7(c) (Operation after refusal to issue or after revocation of certificate) or G.S. 95-111.10(c) (Reports required) or G.S. 95-111.12 (Liability insurance) shall be subject to a civil penalty not to exceed five hundred dollars ($500.00) for each day each device is so operated or used.

(c) Any person who violates G.S. 95-111.8 (Location notice) shall be subject to a civil penalty not to exceed five hundred dollars ($500.00) for each day any device is operated or used without the location notice having been provided.

(d) Any person who violates the provisions of G.S. 95-111.10(d) (Reports required) or knowingly permits the operation of an amusement device in violation of G.S. 95-111-11(a) (Operator requirements) shall be subject to a civil penalty not to exceed five hundred dollars ($500.00).

(e) Any person who violates G.S. 95-111.9 (Operation of unsafe device) or G.S. 95-111.11(b) (Operation of an amusement device while impaired) shall be subject to a civil penalty not to exceed one thousand dollars ($1,000).

(f) In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person and the record of previous violations.

(g) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(h) The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, against whom a civil penalty has been ordered, resides, or if a corporation is involved, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter judgment in accordance therewith and notify the parties. Such judgment shall have the

same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice.

(i) Any person who willfully violates any provision of this Article, and the violation causes the death of any person, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars ($10,000); except that if the conviction is for a violation committed after a first conviction of such person, the person shall be guilty of a Class 1 misdemeanor which may include a fine of not more than twenty thousand dollars ($20,000). This subsection shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such person on a prosecution charging any degree of willful or culpable homicide."

SECTION 6. Section 5(i) of this act is effective on December 1, 2003, and applies to offenses committed on or after that date. Section 2 of this act becomes effective one year after this bill becomes law. The remainder of this act is effective when it becomes law.

HOUSE BILL 609:
Enhance Amusement Device Safety

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Representative Baker
Date:	May 27, 2003	**Summary by:**	Wendy Graf Ray
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 609 would remove exemptions for some amusement devices from regulation under the Amusement Device Safety Act, modify provisions relating to record keeping and notification of use of devices, prohibit operation of devices by operators who are impaired, and add penalties for certain violations.***

BILL ANALYSIS: Article 14B of Chapter 95 of the General Statutes sets out regulations relating to operation of amusement devices in North Carolina. The Commissioner of Labor has the authority to inspect and test amusement devices subject to the provisions of the article and to issue certificates of operation for devices that are in compliance. House Bill 609 would amend Article 14B in the following ways:

Applicability of regulations. Article 14B currently applies to amusement devices that require the supervision of an operator. However, the following devices are exempt from regulation if they are not located in an amusement park or carnival area:

- Hot or cold air inflatable devices
- Bumper boats
- Devices that simulate movement shown on video tapes

Section 1 of the bill would delete this exemption so that all amusement devices that require the supervision of an operator would be regulated by Article 14B regardless of where they are located.

Pre-opening inspection of devices. G.S. 95-111.5 requires owners of amusement devices to make a pre-opening inspection of the device every day that it is intended to be used. The owner is required to maintain signed records of these inspections for at least 30 days. The Commissioner may revoke the certificate of operation for a device if the owner fails to make the required inspections and maintain the required records. **Section 2** would amend G.S. 95-111.5 to require owners to maintain records for at least 12 months, rather than 30 days.

Notice of intent to operate a device. G.S. 95-111.8 prohibits the operation of an amusement device for the public without notifying the Commissioner in writing of the planned schedule of operation at least five days prior to the first date of operation. Any person who violates this requirement is subject to a civil penalty not to exceed $500 for each day the device is operated in violation of the requirement. **Section 3** would amend G.S. 95-111.8 to require 10 days notice of the planned schedule of operation, rather than five days, and eliminate an exception allowing unscheduled operation of a device if notice is given to the Commissioner immediately by telephone or telegraph.

Operation of device while impaired. **Section 4** would add a provision to G.S. 95-111.11 to prohibit any person from operating an amusement device while under the influence of alcohol or any other impairing substance. "Impairing substance" is defined as alcohol, controlled substances under Chapter 90 of the General Statutes, any other drug or psychoactive substance capable of impairing a person's physical or

mental faculties, or any combination of these substances. **Section 5** would provide that any person who operates an amusement device while impaired would be subject to a penalty not to exceed $1,000.

Operator requirements. G.S. 95-111.11 sets out the following qualifications for operators of amusement devices:

- Must be at least 18 years of age
- May not operate more than one device at a time
- Must be in attendance at all times when the device is in operation

Section 5 would provide that any person who knowingly permits the operation of a device in violation of these requirements would be subject to a penalty not to exceed $500.

Violations causing death. **Section 5** would also provide criminal penalties for persons who violate the provisions of Article 14B when the violation causes the death of any person. A first violation causing death would be punishable as a Class 2 misdemeanor, including a fine not to exceed $10,000. A Class 2 misdemeanor would otherwise be punishable by a maximum fine of $1,000. Any subsequent violation causing death would be punishable as a Class 1 misdemeanor, including a fine not to exceed $20,000. This would place a cap on the amount of the fine, which would otherwise be within the discretion of the court.

EFFECTIVE DATE: The provision creating a new criminal penalty for violations that cause death would become effective December 1, 2003. The provision pertaining to record keeping requirements would be effective one year after the bill becomes law. The remainder of bill would be effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 609

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H609-ASU-10 [v.3]

Date 5/27 ,2003

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Senator Berger

moves to amend the bill on page 2, line 9, by rewriting the line to read:

"**§ 95-111.13. Violations; civil penalties; ~~appeal.~~appeal; criminal penalties.**"; and

on page 3, lines 12-15, by rewriting the lines to read:

"**SECTION 6.** G.S. 95-111.13(i), as enacted by Section 5 of this act, becomes effective December 1, 2003, and applies to offenses committed on or after that date. Section 2 of this act becomes effective one year after this bill becomes law. The remainder of this act becomes effective October 1, 2003."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

CHAPTER 95. DEPARTMENT OF LABOR AND LABOR REGULATIONS

ARTICLE 14B. AMUSEMENT DEVICE SAFETY ACT OF NORTH CAROLINA

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

N.C. Gen. Stat. § 95-111.3 (2003)

§ 95-111.3. Definitions

(a) The term "amusement device" shall mean any mechanical or structural device or attraction that carries or conveys or permits persons to walk along, around or over a fixed or restricted route or course or within a defined area including the entrances and exits thereto, for the purpose of giving such persons amusement, pleasure, thrills or excitement. The term shall include but not be limited to roller coasters, Ferris wheels, merry-go-rounds, glasshouses, waterslides, and walk-through dark houses. This term shall not include the following:

(1) Devices operated on a river, lake, or any other natural body of water;

(2) Wavepools;

(3) Roller skating rinks;

(4) Ice skating rinks;

(5) Skateboard ramps or courses;

(6) Mechanical bulls;

(7) Buildings or concourses used in laser games;

(8) All terrain vehicles;

(9) Motorcycles;

(10) Bicycles; and

(11) Mopeds.

(b) The term "amusement park" shall mean any tract or area used principally as a permanent location for amusement devices.

(b1) The term "carnival area" shall mean any area, track, or structure that is rented, leased, or owned as a temporary location for amusement devices.

(c) The term "Commissioner" shall mean the North Carolina Commissioner of Labor or his authorized representative.

(d) The term "Director" shall mean the Director of the Elevator and Amusement Device Division of the North Carolina Department of Labor.

(e) The term "operator" shall mean any person having direct control of the operation of an amusement device. The term "operator" shall not include any person on the device for the purpose of receiving amusement, pleasure, thrills, or excitement.

(f) The term "owner" shall mean any person or authorized agent of such person who owns an

(g) The term "person" shall mean any individual, association, partnership, firm, corporation, private organization, or the State of North Carolina or any political subdivision thereof or any unit of local government.

(h) The term "waterslide" shall mean a stationary amusement device that provides a descending ride on a flowing water film through a trough or tube or on an inclined plane into a pool of water. This term does not include devices where the vertical distance between the highest and the lowest points does not exceed 15 feet.

HISTORY: 1985 (Reg. Sess., 1986), c. 990, s. 2; 1987, c. 864, s. 90(a); 1991, c. 178, s. 2.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 609

Committee Substitute Favorable 4/8/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H609-PCS60357-SU-24

Short Title: Enhance Amusement Device Safety. (Public)

Sponsors:

Referred to:

March 24, 2003

A BILL TO BE ENTITLED

AN ACT TO ENHANCE LAWS PERTAINING TO THE AMUSEMENT DEVICE SAFETY ACT OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-111.2(b) reads as rewritten:

"(b) This Article shall not apply to any device which does not normally require the supervision or services of an operator. ~~Unless they are located in an amusement park or carnival area, the following devices or attractions are exempt from this Article:~~

~~(1) Hot or cold air inflatable devices;~~

~~(2) Bumper boats; and~~

~~(3) Simulator devices that simulate the movement shown on various video tapes.~~"

SECTION 2. G.S. 95-111.5(b) reads as rewritten:

"(b) An owner of a device subject to the provisions of this Article, or his authorized agent, is hereby required to maintain for at least ~~30 days~~ the previous 12 months a signed record of the required pre-opening inspection and test and such other pertinent information as the Commissioner may require by rule or regulation."

SECTION 3. G.S. 95-111.8 reads as rewritten:

"**§ 95-111.8. Location notice.**

No person shall operate for the public or permit the operation for the public any device subject to the provisions of this Article after initial assembly or after reassembly at any location within this State without first notifying the Commissioner of the intention to operate for the public. Written notice of a planned schedule of operation or use shall be received at least ~~five~~ 10 days prior to the first planned date of operation or use. ~~Notice of unscheduled use shall be given immediately to the Commissioner by telephone or telegraph.~~"

SECTION 4. G.S. 95-111.11 reads as rewritten:

"**§ 95-111.11. Operators.**

(a) Any operator of a device subject to the provisions of this Article shall be at least 18 years of age. An operator shall operate no more than one device at any given time. An operator shall be in attendance at all times the device is in operation.

(b) No person shall operate any amusement device equipment while under the influence of alcohol or any other impairing substance as defined by G.S. 20-4.01(14a). It shall be a violation of this subsection to knowingly permit the operation of any amusement device while the operator is under the influence of an impairing substance."

SECTION 5. G.S. 95-111.13 reads as rewritten:

"**§ 95-111.13. Violations; civil penalties; ~~appeal.~~appeal; criminal penalties.**

(a) Any person who violates G.S. 95-111.7(a) or (b) (Operation without certificate; operation not in accordance with Article or rules and regulations) shall be subject to a civil penalty not to exceed two hundred fifty dollars ($250.00) for each day each device is so operated or used.

(b) Any person who violates G.S. 95-111.7(c) (Operation after refusal to issue or after revocation of certificate) or G.S. 95-111.10(c) (Reports required) or G.S. 95-111.12 (Liability insurance) shall be subject to a civil penalty not to exceed five hundred dollars ($500.00) for each day each device is so operated or used.

(c) Any person who violates G.S. 95-111.8 (Location notice) shall be subject to a civil penalty not to exceed five hundred dollars ($500.00) for each day any device is operated or used without the location notice having been provided.

(d) Any person who violates the provisions of G.S. 95-111.10(d) (Reports required) or knowingly permits the operation of an amusement device in violation of G.S. 95-111.11(a) (Operator requirements) shall be subject to a civil penalty not to exceed five hundred dollars ($500.00).

(e) Any person who violates G.S. 95-111.9 (Operation of unsafe device) or G.S. 95-111.11(b) (Operation of an amusement device while impaired) shall be subject to a civil penalty not to exceed one thousand dollars ($1,000).

(f) In determining the amount of any penalty ordered under authority of this section, the Commissioner shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person being charged, the gravity of the violation, the good faith of the person and the record of previous violations.

(g) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(h) The Commissioner may file in the office of the clerk of the superior court of the county wherein the person, against whom a civil penalty has been ordered, resides, or if a corporation is involved, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter

judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though said judgment had been rendered in a suit duly heard and determined by the superior court of the General Court of Justice.

(i) Any person who willfully violates any provision of this Article, and the violation causes the death of any person, shall be guilty of a Class 2 misdemeanor, which may include a fine of not more than ten thousand dollars ($10,000); except that if the conviction is for a violation committed after a first conviction of such person, the person shall be guilty of a Class 1 misdemeanor, which may include a fine of not more than twenty thousand dollars ($20,000). This subsection shall not prevent any prosecuting officer of the State of North Carolina from proceeding against such person on a prosecution charging any degree of willful or culpable homicide."

SECTION 6. G.S. 95-111.13(i), as enacted by Section 5 of this act, becomes effective December 1, 2003, and applies to offenses committed on or after that date. Section 2 of this act becomes effective one year after this bill becomes law. The remainder of this act becomes effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H **2**

HOUSE BILL 892
Committee Substitute Favorable 4/30/03

Short Title: Workers Comp./Interstate Carrier Drivers. (Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE COMMON LAW DETERMINES WHETHER A DRIVER OF A TRUCK, TRACTOR, OR TRUCK TRACTOR TRAILER OF AN INTERSTATE MOTOR CARRIER IS AN EMPLOYEE SUBJECT TO THE WORKERS' COMPENSATION ACT AND TO DEFINE THE OBLIGATIONS UNDER THE ACT FOR SUCH DRIVERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"**§ 97-19.1. Truck, tractor, or truck tractor trailer driver's status as employee or independent contractor.**

An individual in the interstate carrier industry who operates a truck, tractor, or truck tractor licensed by a governmental motor vehicle regulatory agency may be an employee or an independent contractor under this Article dependent upon the application of the common law test for determining employment status.

Any principal contractor, intermediate contractor, or subcontractor, irrespective of whether such contractor regularly employs three or more employees, who contracts with an individual in the interstate carrier industry who operates a truck, tractor, or truck tractor licensed by a governmental motor vehicle regulatory agency, who has not secured the payment of compensation in the manner provided for employers set forth in G.S. 97-93 for himself personally and for his employees and subcontractors, if any, shall be liable as an employer under this Article for the payment of compensation and other benefits on account of the injury or death of the independent contractor and his employees or subcontractors due to an accident arising out of and in the course of the performance of the work covered by such contract.

The principal contractor, intermediate contractor, or subcontractor may insure any and all of his independent contractors and their employees or subcontractors in a blanket policy and when insured the independent contractors, subcontractors, and employees will be entitled to compensation benefits under the blanket policy.

A principal contractor, intermediate contractor, or subcontractor may include in the governing contract with an independent contractor in the interstate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency an agreement for the independent contractor to reimburse the cost of covering that independent contractor under the principal contractors, intermediate contractor's, or subcontractor's coverage of his business."

SECTION 2. This act is effective when it becomes law and applies to any claim arising on or after October 1, 2003.

HOUSE BILL 892:
Workers Comp. Interstate Carrier Duties.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Representatives Saunders and McComas
Date:	May 27, 2003		
Version:	Second Edition	**Summary by:**	O. Walker Reagan, Committee Co-Counsel

SUMMARY: ***House Bill 892 would amend Chapter 97 of the General Statutes (Workers Compensation) to make a person who hires an interstate truck driver liable under the workers compensation statutes for the driver's injury or death arising out of and in the course of performance under the contract, regardless of whether the driver is deemed to be an employee or an independent contractor. The bill provides that the common law test of whether an interstate truck or tractor trailer driver is an independent contractor or an "employee" under the state's workers compensation laws applies for purposes of determining whether or not the contractor maybe reimbursed for the cost of workers compensation coverage by the driver.***

CURRENT LAW: Under current law, an employer of three or more employees must provide workers compensation coverage for injuries or death to the employees that arise out of and in the course of the performance of work performed by the employees. If the person is not an employee, but is an independent contractor, the employer is not responsible for providing coverage in most situations.

Under common law, the courts examine a variety of factors to determine whether a person is an employee or an independent contractor including the following:

- An employer's control over the individual's work environment.
- Method of payment (lump sum or hourly).
- Source of materials.
- An individual's right to employ other persons.
- Whether an individual maintains an independent business.
- An employer's right to terminate an individual's employment, with or without good cause.
- Payment of benefits by an employer, including insurance coverage.

BILL ANALYSIS: House Bill 892 enacts a new section to provide that a person contracts (either as an employee or independent contractor) with a driver of a truck, tractor, or tractor trailer licensed for interstate commerce is liable for the driver's injury or death if the person does not provide for the driver to be covered under the person's workers compensation coverage. The bill allows the person to insure independent contractors under the person's blanket workers compensation policy and to be reimbursed by the independent contractor for the cost of the coverage.

The bill provides that the determination as to whether a driver is an employee or an independent contractor is to be determined by the common law test.

EFFECTIVE DATE: The bill is effective when it becomes law and applies to claims arising on or after October 1, 2003.

This summary was substantially contributed to by Tim Hovis, Counsel to the House Insurance Committee.

H892-SMRU-003

§ 97-2. Definitions.

When used in this Article, unless the context otherwise requires –

...

(2) Employee. – The term "employee" means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer, and as relating to those so employed by the State, the term "employee" shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term "employee" shall include all officers and employees thereof, including such as are elected by the people. The term "employee" shall include members of the North Carolina national guard while on State active duty under orders of the Governor and members of the North Carolina State Defense Militia while on State active duty under orders of the Governor. The term "employee" shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee, as herein defined, of a municipality, county, or of the State of North Carolina, while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

...

§ 97-19. Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability.

Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without requiring from such subcontractor or obtaining from the Industrial Commission a certificate, issued by a workers' compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance to a self-insured subcontractor, stating that such subcontractor has complied with G.S. 97-93 hereof, shall be liable, irrespective of whether such subcontractor has regularly in service fewer than three employees in the same business within this State, to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract. If the principal contractor, intermediate contractor or subcontractor shall obtain such certificate at the time of subletting such contract to subcontractor, he shall not thereafter be held liable to any employee of such subcontractor for compensation or other benefits under this Article.

Any principal contractor, intermediate contractor, or subcontractor paying compensation or other benefits under this Article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who independently of such provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

The principal or owner may insure any or all of his contractors and their employees in a blanket policy, and when so insured such contractor's employees will be entitled to compensation benefits regardless of whether the relationship of employer and employee exists between the principal and the contractor.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 27, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Wall	Conservation Council
Mike W[illegible]	NCRPS
Tim Crosby	VNCTV
Bill Dyer[illegible]	BANC of America
[illegible]	Local Telegram Bank
Katherine Daigs	ElectriCities

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 27, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Stock	NC Bankers Assn.
Amy Dobson	NC Statewatch
John McHugh	Gov office
John O'Hale	Gov. Office
Larry Shirley	State Energy Office
Josh Stein	NCAGO
Ellen Ginsberg	"
Amy Darden	NC Bar Assn.
Stephanie Simpson	NC Assn. of Realtors
[signature]	NCAHP
Ken Wright	BCBSNC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 27, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rev. Mark Creech	CAL
Lori Ann Harris	L. A. Harris & Assoc
[illegible]	NCRA
Perri Morgan	NFIB
Bill Hake	Jordan Price
M Jenatian	Hospitality & Tourism Alliance
Brad Overcash	Intern
A. Britt	N.C. Dept. Labor
Jonathan Brooks	N.C. Dept of Labor
Barbara Jackson	NCDOL
Joan Reicy	Progress Energy Solutions

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 27, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan Valauri	Nationwide
FRANK W. FOLGER	N.C. DOT
Barbara Carlin	IC
[illegible]	WCSR
[illegible]	Hexaware
[illegible]	Pappas & Associates
BILL MARTIN	ATTORNEY, GREENSBORO
[illegible]	WCSR
Dick Carlton	Carlton & Alexander
Larry Heckner	Household Financial Group
John Bowdish	AstraZeneca

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 27, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Rust	NCFPC
Bill Wilson	NCATL
Joe Brown	system Raleigh NC
Bill Rustin	ACP
Bill Goggin	Ecu
Caroline Stem	"
Charlie Diehl	NC Trucking Assn.
Virgil McBride	"
Chad Essick	Edmisten + Webb
Gary McLamb	NCAGO
Thomas Wahlberg	"

VISITOR REGISTRATION SHEET

Senate Commerce Committee — May 27, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Abby Youngken	Intern
Julia Cummings	Intern
DAVID BARNES	Poyner Spruill
Amy Jo Hare	NCMS
C Porter	SmithAnderson
Rob Paschal	Young, Morris
Henry S. Kidd	Asheboro Paper
Chip Kullman	Moore & Van Allen
Deanette Gardner	NC Industrial Commission
Andy Romanet	NCLM
Paul Parks	Parker Watson
Courtney Crowder	NC DOI

2003-2004

SENATE
COMMERCE

COMMITTEE
MINUTES

Senate Commerce Committee
Tuesday, June 3, 2003, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 116	Farm Machinery Law/Notice of Termination.	Representative Hill
HB 339	Life and Health Insurance Omnibus.-AB	Representative Wright
HB 892	Workers Comp./Interstate Carrier Drivers.	Representative McComas Representative Saunders
HB 964	Furniture Requirements Contracts.	Representative Warner
HB 974	State Purchases of Substitute for Milk.	Representative Hill
HB 994	Public Works Exemption.	Representative Williams
HB 999	Toner/Inkjet Cartridges.	Representative Hackney Representative Sauls
HB 1140	North Carolina 'Quick Clearance' Act.	Representative Allred Representative Coates
HB 1181	Workplace Safety/Reinspections.	Representative Goodwin
HB 1182	OSHA Tech. Changes/Fatality Penalty.	Representative Goodwin
HB 1201	Consecutive Water Systems/Manufactured Homes.	Representative Allred

Presentations

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, June 3, 2003 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, June 3, 2003, in Room 1027 of the Legislative Building. Seventeen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced the pages: Savannah Harrison of Plymouth, sponsored by Senator Marc Basnight; Susan Radcliffe of Belhaven, sponsored by Senator Basnight, and Cameron Barr of Lexington, sponsored by Senator Stan Bingham.

Senator Soles introduced Representative Joe Hackney to explain HB 999, Toner/Inkjet Cartridges. Senator David Hoyle moved the adoption of a committee substitute. The motion carried. Senator Tony Rand sent forth an amendment (#1) and moved its adoption. The motion carried. Senator Virginia Foxx sent forth an amendment (#2) and moved it adoption. The motion failed. Senator Apodaca moved an unfavorable report of the bill, but favorable as to the committee substitute as amended and engrossed into a new committee substitute. Ms. Perri Morgan, representing the National Federation of Independent Businesses, spoke in favor of the bill. Mr. Mark Poovey, representing Lexmark, spoke against the bill. The motion carried.

Senator Soles introduced Representative Dewey Hill to explain HB 116, Farm Machinery Law/Notice of Termination. Senator Foxx moved a favorable report of the bill. The motion carried.

Senator Soles announced that Representative Thomas Wright was not present and Mr. Frank Folger of the Department of Insurance explained HB 339, Life and Health Insurance Omnibus-AB. Senator Patrick Ballantine moved to adopt a committee substitute. The motion carried. Senator Foxx moved an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Senator Soles introduced Representative Drew Saunders to explain HB 892, Workers Comp./Interstate Carrier Drivers. Senator Vernon Malone moved to adopt a committee substitute. The motion carried. Senator William Purcell moved an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Senator Soles introduced Representative Cary Allred to explain HB 1140, North Carolina 'Quick Clearance' Act. Senator Ballantine moved to adopt a committee substitute. The motion carried. Senator Phil Berger moved an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Representative Cary Allred explained HB 1201, Consecutive Water Systems/Manufactured Homes. Senator Foxx moved a favorable report of the bill. The motion carried.

Senator Soles introduced Representative Keith Williams to explain HB 994, Public Works Exemption. Senator Purcell sent forth an amendment and moved it be adopted. The motion carried. Mr. David Crawford, representing the American Institute of Architects, spoke in opposition to the bill. Senator Purcell moved a favorable report of the bill as amended, and that it be engrossed into a committee substitute. The motion carried.

Senator Soles introduced Representative Wayne Goodwin to explain HB 1181, Workplace Safety/Reinspections. Mr. Art Britt and Mr. John Romany of the Department of Labor answered questions asked by committee members. Senator Tony Moore moved a favorable report of the bill. The motion carried.

Representative Wayne Goodwin explained HB 1182, OSHA Tech. Changes/Fatality Penalty. Senator Moore moved a favorable report of the bill. The motion carried.

The committee did not consider HB 964, Furniture Requirements Contracts, or HB 974, State Purchases of Substitute for Milk.

The meeting adjourned at 11:55 a.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Wednesday, June 04, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **892** Workers Comp./Interstate Carrier Drivers.

Draft Number:	PCS 30358
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

H.B.(CS #1) **994** Public Works Exemption.

Draft Number:	PCS 60365
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1) **1140** North Carolina 'Quick Clearance' Act.

Draft Number:	PCS 60366
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Wednesday, July 09, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **999** Toner/Inkjet Cartridges.

Draft Number:	PCS60367
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 999
Second Edition Engrossed 4/30/03

Short Title:	Toner/Inkjet Cartridges.	(Public)
Sponsors:	Representatives Hackney, Sauls (Primary Sponsors); Insko and Lewis.	
Referred to:	Judiciary I.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT MAKING VOID AND UNENFORCEABLE AS A MATTER OF PUBLIC POLICY ANY PROVISION IN ANY AGREEMENT OR CONTRACT THAT PROHIBITS THE REUSING, REMANUFACTURING, OR REFILLING OF A TONER OR INKJET CARTRIDGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-36. Certain contracts relating to toner or inkjet cartridges void and unenforceable as a matter of public policy.**

Any provision in any agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge is void and unenforceable as a matter of public policy if the procurement of that agreement or contract violates the provisions of Article 1 of Chapter 75 of the General Statutes."

SECTION 2. This act is effective October 1, 2003, and applies to agreements or contracts entered into on or after that date. This act does not apply to or affect any litigation pending before that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 999
Second Edition Engrossed 4/30/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H999-CSSU-26 [v.1]

5/30/2003 2:57:07 PM

Short Title: Toner/Inkjet Cartridges. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT MAKING VOID AND UNENFORCEABLE AS A MATTER OF PUBLIC POLICY ANY PROVISION IN ANY AGREEMENT OR CONTRACT THAT PROHIBITS THE REUSING, REMANUFACTURING, OR REFILLING OF A TONER OR INKJET CARTRIDGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-36. Certain contracts relating to toner or inkjet cartridges void and unenforceable as a matter of public policy.**

Any provision in any agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge is void and unenforceable as a matter of public policy."

SECTION 2. This act is effective October 1, 2003, and applies to agreements or contracts entered into on or after that date. This act does not apply to or affect any litigation pending before that date.

HOUSE BILL 999:
Toner/Inkjet Cartridges

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Representatives Hackney and Sauls
Date:	June 3, 2003		
Version:	Proposed Committee Substitute H999-CSSU-26[v.1]	**Summary by:**	Wendy Graf Ray Committee Counsel

SUMMARY: ***House Bill 999 would make void any provision in a contract that prohibits reusing a toner or inkjet cartridge.***

BILL ANALYSIS: House Bill 999 would make any provision in an agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge void and unenforceable as a matter of public policy.

BACKGROUND: There are companies in North Carolina and throughout the country that recycle, remanufacture, or refill cartridges for printers. This process enables customers to replace cartridges, usually at a lower price, while reducing the amount of waste created by used cartridges.

The General Assembly has previously supported a policy of recycling toner cartridges by passing legislation directing the Department of Administration to require the purchase or use of remanufactured toner cartridges for laser printers to the extent practicable.

EFFECTIVE DATE: The act would become effective October 1, 2003, and would apply to agreements or contracts entered into on or after that date. It would not affect any litigation pending before that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 999

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H999-ASU-12 [v.1]

Date 6/3/03 ,2003

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Senator Rand

moves to amend the bill on page 1, line 13, by adding the following at the end of the line:

"Nothing in this section shall prevent any maintenance contract that warrants the performance of equipment under contract from requiring the use of new or specified toner or inkjet cartridges in the equipment under contract."

SIGNED Tony Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 999

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H999-ASU-11 [v.1]

Date 6/3 ,2003

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Senator Foxx

moves to amend the bill on page 1, line 13, by deleting "policy." And substituting "policy if the procurement of that agreement or contract violates the provisions of Article 1 of Chapter 75 of the General Statutes."

SIGNED J Foxx
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED X TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 999

Second Edition Engrossed 4/30/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H999-PCS60367-SU-26

Short Title: Toner/Inkjet Cartridges. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT MAKING VOID AND UNENFORCEABLE AS A MATTER OF PUBLIC POLICY ANY PROVISION IN ANY AGREEMENT OR CONTRACT THAT PROHIBITS THE REUSING, REMANUFACTURING, OR REFILLING OF A TONER OR INKJET CARTRIDGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-36. Certain contracts relating to toner or inkjet cartridges void and unenforceable as a matter of public policy.**

Any provision in any agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge is void and unenforceable as a matter of public policy. Nothing in this section shall prevent any maintenance contract that warrants the performance of equipment under the contract from requiring the use of new or specified toner or inkjet cartridges in the equipment under contract."

SECTION 2. This act becomes effective October 1, 2003, and applies to agreements or contracts entered into on or after that date. This act does not apply to or affect any litigation pending before that date.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, June 03, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1) **116** Farm Machinery Law/Notice of Termination.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1181** Workplace Safety/Reinspections.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1182** OSHA Tech. Changes/Fatality Penalty.
Sequential Referral: Finance
Recommended Referral: None

H.B. **1201** Consecutive Water Systems/Manufactured Homes.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 4

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 116
Committee Substitute Favorable 4/29/03

Short Title: Farm Machinery Law/Notice of Termination. (Public)

Sponsors:

Referred to:

February 27, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING NOTICE OF TERMINATION OF FARM MACHINERY AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-182 reads as rewritten:

"**§ 66-182. Notice of termination of agreements.**

(a) ~~No supplier, directly or through an officer, agent, or employee, may terminate, cancel, fail to renew, or substantially change the competitive circumstances of an agreement without good cause.~~ Notwithstanding any agreement to the contrary, a supplier who terminates or otherwise fails to renew or substantially changes the competitive circumstances of an agreement with a dealer without good cause shall notify the dealer of the termination not less than 90 days prior to the effective date of the termination and shall provide a 60-day right-to-cure the deficiency. If the deficiency is cured within the allotted time, the notice is void. In the case where cancellation is enacted due to market penetration, a reasonable period of time shall have existed where the supplier has worked with the dealer to gain the desired market share. If there is any reason constituting good cause for action, the notice shall state that reason.

(a1) Notwithstanding any agreement to the contrary, a supplier who terminates or otherwise fails to renew or substantially changes the competitive circumstances of an agreement with a dealer for good cause is not required to notify the dealer of the termination or to provide a right-to-cure the deficiency.

(b) Notwithstanding any agreement to the contrary, a dealer who terminates an agreement with a supplier shall notify the supplier of the termination not less than 90 days prior to the effective date of the termination.

~~(b1) A supplier shall provide a dealer with at least 90 days' written notice of termination of the agreement and a 60-day right-to-cure the deficiency. If the deficiency is cured within the allotted time, the notice is void. In the case where cancellation of an agreement is based upon the dealer's failure to capture the share of the market required in the agreement, a minimum 12-month period of time shall have existed where the~~

~~supplier has worked with the dealer to gain the desired market share. The notice shall state all reasons constituting good cause.~~

(c) Notification under this section shall be in writing and shall be by certified mail or personally delivered to the recipient. It shall contain all of the following:

(1) A statement of intention to terminate the dealership.

(2) A statement of the reasons for the termination.

(3) The date on which the termination takes effect."

SECTION 2. This act becomes effective October 1, 2003.

HOUSE BILL 116:
Farm Machinery Law/Notice of Termination.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Hill
Date:	June 3, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Second Edition		

SUMMARY: ***House Bill 116 amends the Farm Machinery Agreements law to clarify when a farm machinery supplier may terminate a farm machinery agreement with a retail dealer both with and without cause.***

CURRENT LAW: Article 26 of Chapter 66 sets out the law governing contracts between farm machinery equipment suppliers and the retail dealers of this equipment. Farm machinery equipment is defined to include farm implements and machinery, construction, utility and industrial equipment, consumer products, outdoor power equipment, attachments, and repair parts. This law sets out the rights of the parties to these farm machinery agreements, including the rights to terminate these agreements with or without good cause (as defined), as well as the obligation of the supplier to repurchase inventory upon termination. The law also defines the supplier's obligations on warranties to consumers of products sold.

BILL ANALYSIS: The bill amends the law to permit a supplier to terminate an agreement without good cause upon 90-days prior notice of intent to terminate with a 60-day right-to-cure any deficiency. If the deficiency is cured the notice is void. If the cancellation is the result of the dealer's failure to obtain market penetration, a reasonable time (not defined) must be allow where the supplier has worked with the dealer to gain market share. Where an agreement is terminated for good cause, the reason must be stated.

The bill also permits a supplier to terminate an agreement for good cause without notice and without permitting the right-to-cure. Good cause is currently defined in the law to include bankruptcy, misrepresentations with the intent to defraud, default on financing obligations with the supplier, close out of a substantial portion of the dealer's business related to the sale of farm machinery, significant change in ownership without prior consent of the supplier, abandonment of the business, or conviction of a felony.

EFFECTIVE DATE: The bill becomes effective on October 1, 2003.

§ 66-180. Definitions.

As used in this Article, unless the context requires otherwise:

(1) "Agreement" means a written or oral contract or agreement between a dealer and a wholesaler, manufacturer, or distributor by which the dealer is granted one or more of the following rights:
   a. To sell or distribute goods or services.
   b. To use a trade name, trademark, service mark, logo type, or advertising or other commercial symbol.

(2) "Current model" means a model listed in the wholesaler's, manufacturer's, or distributor's current sales manual or any supplements.

(3) "Current net price" means the price listed in the supplier's price list or catalog in effect at the time the agreement is terminated, less any applicable discounts allowed.

(4) "Dealer" means a person engaged in the business of selling at retail farm, construction, utility or industrial, equipment, implements, machinery, attachments, outdoor power equipment, or repair parts.

(5) "Family member" means a spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild, or a lineal descendant of the dealer or principal owner of the dealership.

(6) "Good cause" means failure by a dealer to comply with requirements imposed upon the dealer by the agreement if the requirements are not different from those imposed on other dealers similarly situated in this State. In addition, good cause exists in any of the following circumstances:
   a. A petition under bankruptcy or receivership law has been filed against the dealer.
   b. The dealer has made an intentional misrepresentation with the intent to defraud supplier.
   c. Default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier or a revocation or discontinuance of a guarantee of a present or future obligation of the retailer to the supplier.
   d. Closeout or sale of a substantial part of the dealer's business related to the handling of goods; the commencement or dissolution or liquidation of the dealer if the dealer is a partnership or corporation; or a change, without the prior written approval of the supplier, which shall not be unreasonably withheld, in the location of the dealer's principal place of business or additional locations set forth in the agreement.
   e. Withdrawal of an individual proprietor, partner, major shareholder, or manager of the dealership, or a substantial reduction in interest of a partner or major shareholder, without the prior written consent of the supplier.
   f. Revocation or discontinuance of any guarantee of the dealer's present or future obligations to the supplier.
   g. The dealer has failed to operate in the normal course of business for seven consecutive business days or has otherwise abandoned the business.
   h. The dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and the supplier.
   i. The dealer transfers an interest in the dealership, or a person with a substantial interest in the ownership or control of the dealership, including an individual proprietor, partner, or major shareholder, withdraws from the dealership or dies, or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership.

(7) "Inventory" means farm implements and machinery, construction, utility and industrial equipment, consumer products, outdoor power equipment, attachments, or repair parts.

(8) "Net cost" means the price the dealer paid the supplier for the inventory, less all applicable discounts allowed, plus the amount the dealer paid for freight costs from the supplier's location to the dealer's location, plus reasonable cost of assembly or disassembly performed by the dealer.

(9) "Supplier" means a wholesaler, manufacturer, distributor, or any purchaser of assets or stock of any surviving corporation resulting from a merger or liquidation, any receiver or assignee, or any trustee of the original manufacturer, wholesaler, or distributor who enters into an agreement with a dealer.

(10) "Superseded part" means any part that will provide the same function as a currently available part as of the date of cancellation.

(11) "Termination" of an agreement means the termination, cancellation, nonrenewal, or noncontinuance of the agreement. (1985, c. 441, s. 1; 2001-343, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H **3**

HOUSE BILL 339

Committee Substitute Favorable 4/24/03
Committee Substitute #2 Favorable 4/30/03

Short Title: Life and Health Insurance Omnibus.-AB (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO CONFORM NORTH CAROLINA'S THIRD PARTY ADMINISTRATOR ARTICLE TO REVISIONS TO THE NAIC MODEL THIRD PARTY ADMINISTRATOR STATUTE; REQUIRE GROUP ANNUITY INSURERS TO ISSUE INDIVIDUAL CERTIFICATES OF COVERAGE TO EACH ANNUITANT; REORGANIZE ARTICLE 60 OF CHAPTER 58 OF THE GENERAL STATUTES AND AMEND CURRENT DISCLOSURE REQUIREMENTS FOR SOLICITATION OF LIFE INSURANCE PRODUCTS AND ANNUITIES; REQUIRE INSURERS TO NOTIFY EMPLOYEES OF THE EXISTENCE OF EMPLOYER-OWNED LIFE INSURANCE POLICIES WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF COVERAGE; REQUIRE THAT ASSOCIATION PREMIUM RATES FOR ACCIDENT AND HEALTH INSURANCE BE ACTUARIALLY SOUND AND THAT ASSOCIATIONS BE RATED AS A SINGLE GROUP WHEN THE COVERAGE PROVIDED IS NOT EMPLOYER-BASED; LIMIT AN INDIVIDUAL ACCIDENT AND HEALTH INSURER'S USE OF AN INDIVIDUAL'S OWN CLAIMS' EXPERIENCE TO DEVELOP THE INDIVIDUAL'S RENEWAL RATE; EXEMPT A SOLE PROPRIETOR FROM THE FULL-TIME BASIS OR THIRTY-HOUR WORKWEEK REQUIREMENTS TO BE ELIGIBLE FOR LARGE GROUP HEALTH COVERAGE LIKE THE PROPRIETOR'S FULL-TIME EMPLOYEES; CORRECT AN INADVERTENT CROSS-REFERENCE IN ORDER TO REAPPLY NEWBORN COVERAGE TO A MORE COMPREHENSIVE GROUP OF INSURERS; TECHNICALLY CORRECT AN OMISSION REGARDING PROVISIONS GOVERNING PREEXISTING CONDITIONS FOR LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES; DECREASE THE TOTAL NUMBER OF MEMBERS THAT SERVE ON THE SMALL EMPLOYER REINSURANCE POOL BOARD FROM NINE TO SIX; ALLOW PERSONS RETROACTIVELY ENROLLED IN MEDICARE PART B

THE SAME SIX-MONTH OPEN ENROLLMENT PERIOD FOR MEDICARE SUPPLEMENT PLANS AS PERSONS WHO ENROLLED IN MEDICARE PART B WITHOUT A RETROACTIVE EFFECTIVE DATE OF COVERAGE; TECHNICALLY CORRECT THE REVOCATION AND SUSPENSION LAW TO INCLUDE A BENEFICIARY OF A LIFE OR ANNUITY CONTRACT AS A CLAIMANT; MANDATE HEALTH BENEFIT COVERAGE FOR DESIGNATED TRAVEL EXPENSES WHEN THE REQUIRED DISTANCE TRAVELED THRESHOLD IS MET; TO REQUIRE RATE METHODOLOGY UNDER MEDICARE SUPPLEMENTAL INSURANCE POLICIES TO BE BASED ON ISSUE AGE AND TO MAKE OTHER CHANGES TO THE LAW PERTAINING TO MEDICARE SUPPLEMENTAL INSURANCE POLICIES; AND MAKE TECHNICAL CORRECTIONS TO THE CREDIT INSURANCE LAWS.

The General Assembly of North Carolina enacts:

PART I. THIRD PARTY ADMINISTRATOR ACT REWRITE

SECTION 1. G.S. 58-56-2 is repealed.

SECTION 1.1. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-3. Definitions.**

As used in this Article:

(1) "Administrator", "third party administrator", and "TPA" mean a person who directly or indirectly underwrites, collects, or charges premiums from, or adjusts or settles claims on, residents of this State in connection with life, annuity, or health coverage offered or provided by an insurer, except any of the following:

a. An employer, or a wholly owned direct or indirect subsidiary of an employer, on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer.

b. A union on behalf of its members.

c. An insurer that is authorized to transact insurance in this State pursuant to Articles 1 through 67 of this Chapter.

d. An insurance producer licensed to sell life, annuity, or health coverage in this State, whose activities are limited exclusively to the sale of insurance.

e. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.

f. A trust and its trustees, agents, and employees acting pursuant to a trust established in conformity with 29 U.S.C. § 186.

g. A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees and employees acting pursuant to the trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code.

h. A credit union or a financial institution that is subject to supervision or examination by federal or State banking authorities, or a mortgage lender, to the extent it collects and remits premiums to licensed insurance producers or to limited lines producers or authorized insurers in connection with loan payments.

i. A credit card issuing company that advances for and collects insurance premiums or charges from its credit card holders who have authorized collection.

j. A person who adjusts or settles claims in the normal course of that person's practice or employment as a licensed attorney and who does not collect charges or premiums in connection with life, annuity, or health coverage.

k. An adjuster licensed by this State whose activities are limited to adjustment of claims.

l. A person licensed as a managing general agent in this State, whose activities are limited exclusively to the scope of activities conveyed under the license.

m. An administrator who is affiliated with an insurer and who only performs the contractual duties (between the administrator and the insurer) of an administrator for the direct and assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator's books and records to the Commissioner, upon a request from the Commissioner.

(2) "Affiliate or affiliated" means an entity or person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Commissioner" means the Commissioner of Insurance of this State.

(4) "Control" means the term as defined in G.S. 58-19-5(2).

(5) "GAAP" means United States generally accepted accounting principles consistently applied.

(6) "Home state" means the District of Columbia and any state or territory of the United States in which an administrator is incorporated or maintains its principal place of business. If neither the state in which the administrator is incorporated nor the state in which it maintains its principal place of business has adopted the NAIC Third Party Administrator Statute, or a substantially similar law governing administrators, the administrator may declare another state in which it conducts business to be its "home state".

(7) "Insurance producer" means a person who sells, solicits, or negotiates a contract of insurance as those terms are defined in this Article.

(8) "Insurer" means an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health

maintenance organization organized under Article 67 of this Chapter, and a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(9) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(10) "Nonresident administrator" means a person who is applying for licensure or is licensed in any state other than the administrator's home state.

(11) "Person" means an individual or a business entity.

(12) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(13) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(14) "Underwrites" or "underwriting" includes the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer or self-funded plan and also includes the overall planning and coordinating of a benefits program.

(15) "Uniform Application" means the current version of the NAIC Uniform Application for Third Party Administrators."

SECTION 1.2. G.S. 58-56-6 reads as rewritten:

"**§ 58-56-6. Written agreement necessary.**

(a) No TPA may act as a TPA without a written agreement between the TPA and the insurer. The written agreement shall be retained as part of the official records of both the insurer and the TPA for the duration of the agreement and for five years thereafter. The agreement shall contain all provisions required by this Article, ~~to the extent those requirements apply to the functions performed by the TPA.~~ except insofar as those requirements do not apply to the functions performed by the TPA.

(b) The agreement shall include a statement of duties that the TPA is expected to perform on behalf of the insurer and the ~~kinds of insurance the TPA is to be authorized to administer.~~lines, classes, or types of insurance for which the TPA is to be authorized to administer. The agreement shall provide for underwriting or other standards pertaining to the business underwritten by the insurer.

(c) The insurer or TPA may, with written notice, terminate the written agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the TPA during the pendency of any dispute regarding the cause for termination of the agreement. The insurer ~~must~~ shall fulfill any lawful obligations with respect to policies affected by the agreement, regardless of any dispute between the insurer and the TPA."

SECTION 1.3. G.S. 58-56-16 reads as rewritten:

"**§ 58-56-16. Records to be kept.**

(a) Every TPA shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance record keeping and must be maintained for a period of at least five years after the date of their creation.

~~(b) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. The Commissioner shall keep confidential any trade secrets contained in those books and records, including the identity and addresses of policyholders and certificate holders, except that the Commissioner may use the information in any judicial or administrative proceeding instituted against the TPA.~~

(c) The insurer shall own the records generated by the TPA pertaining to the insurer, but the TPA shall retain the right to continuing access to books and records to permit the TPA to fulfill all of its contractual obligations to insured parties, claimants, and the insurer.

(d) In the event the insurer and the TPA cancel their agreement, notwithstanding the provisions of subsection (a) of this section, the TPA may, by written agreement with the insurer, transfer all records to a new TPA rather than retain them for five years. In this case, the new TPA shall acknowledge, in writing, that it is responsible for retaining the records of the prior TPA as required in subsection (a) of this section.

(e) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. Any documents, materials, or other information in the possession or control of the Commissioner that are furnished by a TPA, insurer, insurance producer, or an employee or agent thereof acting on behalf of the TPA, insurer, or insurance producer, or obtained by the Commissioner in an investigation shall be confidential by law and privileged, shall not constitute a public record as defined by G.S. 132-1, shall not be subject to subpoena, shall not be subject to discovery, and shall not be admissible in evidence in any private civil action. However, the Commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.

(f) Neither the Commissioner nor any person who receives documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (e) of this section.

(g) In order to assist in the performance of the Commissioner's duties, the Commissioner:

(1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (e) of this section, with other State, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, and with State, federal, and international law enforcement authorities, provided

that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(2) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(3) May enter into agreements governing sharing and use of information consistent with this subsection.

(h) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (g) of this section.

(i) Nothing in this Article shall prohibit the Commissioner from releasing final, adjudicated actions including for-cause terminations that are open to public inspection pursuant to Chapter 132 of the General Statutes or to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or its subsidiaries."

SECTION 1.4. G.S. 58-56-51 is repealed.

SECTION 1.5. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-52. Home state certificate of authority or license.**

(a) A person shall apply to be a TPA in its home state upon the Uniform Application and shall receive a certificate of authority or license from the Commissioner of its home state prior to performing any function of a TPA in this State. Each application shall be accompanied by a nonrefundable filing fee of one hundred dollars ($100.00).

(b) The Uniform Application shall include or be accompanied by the following information and documents:

(1) All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, and other applicable documents and all amendments to those documents.

(2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the applicant.

(3) NAIC Biographical Affidavit for the individuals who are responsible for the conduct of affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership,

association, or limited liability company; any shareholders or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the applicant; and any other person who exercises control or influence over the affairs of the applicant.

(4) Audited annual financial statements or reports for the two most recent fiscal years that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two fiscal years, the Uniform Application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years and for any month during the current fiscal year for which the financial statements or reports have been completed. The applicant shall also include any other information the Commissioner requires in order to review the current financial condition of the applicant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include all of the following:

a. Amounts shown on the consolidated audited financial report shall be shown on the worksheet.

b. Amounts for each entity shall be stated separately.

c. Explanations of consolidating and eliminating entries.

(5) A statement describing the business plan including information on staffing levels and activities proposed in this State and nationwide. The plan shall provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping, and underwriting.

(6) Any other pertinent information required by the Commissioner.

(c) A TPA licensed or applying for licensure under this section shall make available for inspection by the Commissioner copies of all contracts with insurers or other persons utilizing the services of the TPA.

(d) A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

(e) The Commissioner may refuse to issue a certificate of authority or license if the Commissioner determines that the TPA, or any individual responsible for the conduct of affairs of the TPA, is not competent, trustworthy, financially responsible, or of good personal and business reputation, has had an insurance or an administrator certificate of authority or license denied or revoked for cause by any jurisdiction, or if the Commissioner determines that any of the grounds set forth in G.S. 58-56-72 exists with respect to the TPA.

(f) A certificate of authority or license issued under this section shall remain valid, unless surrendered, suspended, or revoked by the Commissioner, for so long as the TPA continues in business in this State and remains in compliance with this Article.

(g) A TPA licensed or applying for licensure under this section shall immediately notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a certificate of authority or license in this State. The Commissioner shall report any such changes to the producer database maintained by the NAIC or affiliates or subsidiaries of the NAIC."

SECTION 1.6. G.S. 58-56-56 is repealed.

SECTION 1.7. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-57. Registration requirement.**

A person who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this State in connection with life, annuity, or health coverage provided by a self-funded plan shall register with the Commissioner annually, verifying its status as herein described in a format prescribed by the Commissioner."

SECTION 1.8. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-62. Annual report and filing.**

(a) Each TPA licensed under G.S. 58-56-52 shall file an annual report for the preceding calendar year with the Commissioner on or before July 1 of each year or within such extension of time as the Commissioner for good cause may grant. The annual report shall include an audited financial statement performed by an independent certified public accountant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the information required under G.S. 58-56-52(b)(4)a. through c. The report shall be in the form and contain such matters as the Commissioner prescribes and shall be verified by at least two officers of the TPA.

(b) The annual report shall include the complete names and addresses of all insurers with which the administrator had agreements during the preceding fiscal year.

(c) At the time of filing its annual report, the administrator shall pay a nonrefundable filing fee of one hundred dollars ($100.00).

(d) The Commissioner shall review the most recently filed annual report of each administrator on or before September 1 of each year. Upon completion of its review, the Commissioner shall either:

(1) Issue a certification to the administrator that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is currently licensed and in good standing, or noting any deficiencies found in the annual report and financial statements; or

(2) Update any electronic database maintained by the National Association of Insurance Commissioners, or its affiliates or subsidiaries, indicating that the annual report shows that the

administrator has a positive net worth as evidenced by audited financial statements and is in compliance with existing law, or noting any deficiencies found in the annual report."

SECTION 1.9. G.S. 58-56-66 is repealed.

SECTION 1.10. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-67. Nonresident administrator certificate of authority.**

(a) Unless a TPA has obtained a home state certificate of authority or license in this State under G.S. 58-56-52, any TPA who performs administrator duties in this State shall obtain a nonresident administrator certificate of authority or license in accordance with this section by filing with the Commissioner the Uniform Application accompanied by a letter of certification from the home state of the TPA. In lieu of requiring a TPA to file a letter of certification with the Uniform Application, the Commissioner may verify the nonresident administrator's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries.

(b) A TPA shall not be eligible for a nonresident administrator certificate of authority or license under this section if it does not hold a certificate of authority as a resident in a home state that has adopted the NAIC Third Party Administrator Statute or a substantially similar law governing TPAs.

(c) Except as provided in subsections (b) and (h) of this section, the Commissioner shall issue to the TPA a nonresident administrator certificate of authority or license promptly upon receipt of a complete application.

(d) Unless notified by the Commissioner that the Commissioner is able to verify the nonresident TPA's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners, or its affiliates or subsidiaries, each nonresident TPA annually shall file a statement that its home state administrator certificate of authority or license remains in force and has not been revoked or suspended by its home state during the preceding year. The statement required by this subsection shall be filed by November 1 each year.

(e) At the time of filing the statement required under subsection (d) of this section or if the Commissioner has notified the nonresident administrator that the Commissioner is able to verify the nonresident administrator's home state certificate of authority or license status through an electronic database, the nonresident TPA shall pay, no later than November 1, a nonrefundable filing fee of one hundred dollars ($100.00).

(f) A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

(g) A nonresident TPA is not required to hold a nonresident administrator certificate of authority or license in this State if the TPA's duties in this State are limited to the administration of a group policy or plan of insurance and no more than a total of 100 persons insured for all plans reside in this State.

(h) The Commissioner may refuse to issue a nonresident administrator certificate of authority or license, or delay the issuance of a nonresident administrator certificate of authority or license, if the Commissioner determines that, due to events or information obtained subsequent to the home state's licensure of the TPA, the nonresident TPA cannot satisfy the requirements of this Article or that grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license. If the Commissioner refuses to issue a certificate of authority of license pursuant to this section, the Commissioner shall give written notice of its determination to the Commissioner of the home state, and the Commissioner may delay the issuance of a nonresident administrator certificate of authority to the nonresident TPA until the Commissioner determines that the administrator can satisfy the requirements of this Article and that no grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license."

SECTION 1.11. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-72. Grounds for denial, suspension, or revocation of certificate of authority.**

(a) The certificate of authority or license of a TPA shall be denied, suspended, or revoked if the Commissioner finds that the TPA:

(1) Is in an unsound financial condition;

(2) Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this State hazardous or injurious to insured persons or the public; or

(3) Has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final.

(b) The Commissioner may, after notice and opportunity for hearing, deny, suspend, or revoke the certificate of authority or license of a TPA if the Commissioner finds that the TPA:

(1) Has violated any lawful rule or order of the Commissioner or any provision of the insurance laws of this State;

(2) Has refused to be examined or to produce its accounts, records, and files for examination, or if any individual responsible for the conduct of affairs of the TPA has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination when required by the Commissioner, including:

a. Members of the board of directors, board of trustees, executive committee, or other governing board or committee;

b. The principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company;

c. Any shareholder or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the TPA; and

d. Any other person who exercises control or influence over the affairs of the TPA;

(3) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the TPA to secure full payment or settlement of such claims;

(4) Fails, at any time, to meet any qualification for which issuance of the certificate could have been refused had the failure then existed and been known to the Commissioner;

(5) Or any of the individuals responsible for the conduct of its affairs has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether adjudication was withheld, including:

a. Members of the board of directors, board of trustees, executive committee or other governing board or committee;

b. The principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company;

c. Any shareholder or member holding directly or indirectly ten percent or more of its voting stock, voting securities, or voting interest; and

d. Any other person who exercises control or influence over its affairs;

(6) Is under suspension or revocation in another state; or

(7) Has failed to timely file its annual report pursuant to G.S. 58-56-62 if a resident administrator or its statement and filing fee, as applicable, pursuant to G.S. 58-56-67(d) and (e) if a nonresident administrator.

(c) The Commissioner may, without advance notice or hearing, immediately suspend the certificate of authority or license of a TPA if the Commissioner finds that one or more of the following circumstances exist:

(1) The TPA is insolvent or impaired.

(2) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the TPA has been commenced in any state.

(3) The financial condition or business practices of the TPA otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this State.

(d) If the Commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of authority issued under this part, the Commissioner may, in lieu of suspension or revocation, impose a fine upon the TPA."

SECTION 1.12. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-73. Prohibited practices.**

No person shall act as, offer to act as, or hold himself or herself out as a TPA in this State without a valid domestic or nonresident administrator certificate of authority issued by the Commissioner."

PART II. GROUP ANNUITY CONTRACTS

SECTION 2. G.S. 58-58-145 reads as rewritten:

"**§ 58-58-145. Group annuity contracts defined; ~~requirements.~~requirements; issuance of individual certificates.**

(a) Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable to more than one person, is a group annuity contract. The person, firm or corporation to whom or to which such contract is issued, as herein provided, is the holder of the contract. The term "annuitant" means any person to whom or which payments are made under the group annuity contract. No authorized insurer shall deliver or issue for delivery in this State any group annuity contract except upon a group of annuitants that conforms to the following: under a contract issued to an employer, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, the stipulated payments on which shall be paid by the holder of such contract either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the employees covered by such contract, and providing a plan of retirement annuities under a plan which permits all of the employees of such employer or of any specified class or classes thereof to become annuitants. Any such group of employees may include retired employees, and may include officers and managers as employees, and may include the employees of subsidiary or affiliated corporations of a corporation employer, and may include the individual proprietors, partners and employees of affiliated individuals and firms controlled by the holders through stock ownership, contract or otherwise.

(b) The insurer of a group annuity contract shall issue to the policyholder, within 30 days of the effective date of the group annuity contract, an individual certificate for delivery to each annuitant which:

(1) Identifies the annuity to which the annuitant is entitled.

(2) States the name of the person to whom the annuity is payable.

(3) Discloses all of the rights and obligations of the insurer, the policyholder, the annuitant, and the persons to whom the annuity is payable with respect to the group annuity contract.

G.S. 58-3-150 applies to the form of the individual certificate required by this subsection.

(c) Each group annuity contract shall include a provision that the insurer will issue to the policyholder within 30 days of the effective date of the contract, for delivery to each annuitant, an individual certificate setting forth the information described in subsection (b) of this section."

PART III. DISCLOSURES FOR ANNUITIES AND LIFE INSURANCE

SECTION 3. The title of Article 60 of Chapter 58 of the General Statutes reads as rewritten:

"Article 60.

~~Regulation of Life Insurance Solicitation.~~

Standards of Disclosure for Annuities and Life Insurance."

SECTION 3.1. Article 60 of Chapter 58 of the General Statues is amended by designating G.S. 58-60-1 through G.S. 58-60-35 as:

"Part 1. Regulation of Life Insurance Solicitation."

SECTION 3.2. G.S. 58-60-1 reads as rewritten:

"**§ 58-60-1. ~~Purpose of Article.~~Short title; purpose.**

(a) This Part may be cited as the "Life Insurance Disclosure Act".

(b) The purpose of this ~~Article~~ Part is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for ~~their~~ the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and to improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

This ~~Article~~ Part does not prohibit an insurer ~~to use~~ from using additional material ~~which~~ that is not in violation of Articles 1 through 64 of this Chapter nor any other statute or regulation."

SECTION 3.3. G.S. 58-60-5 reads as rewritten:

"**§ 58-60-5. ~~Scope of Article;~~ Scope; exemptions.**

(a) Except as otherwise provided in this ~~Article,~~ Part, this ~~Article~~ Part applies to any solicitation, negotiation or procurement of life insurance occurring within this State. This ~~Article~~ Part applies to any issuer of a life insurance contract, including fraternal benefit societies.

(b) Unless otherwise specifically included, this ~~Article~~ Part does not apply to:

(1) ~~Annuities,~~Individual group annuity contracts.

(2) Credit life ~~insurance,~~insurance.

(3) Group life ~~insurance,~~ insurance (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy).

(4) Life insurance policies issued in connection with pension and welfare plans as defined by and that are subject to the federal Employee Retirement Income Security Act of 1974 ~~(ERISA),~~(ERISA).

(5) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(c) The policy summary in this ~~Article~~ Part is not required for policies that are sold subject to rules adopted by the Commissioner for life insurance illustrations."

SECTION 3.4. G.S. 58-60-10(7)k. reads as rewritten:

"k. The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in subparagraph e of this paragraph shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space. If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor, it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in this State."

SECTION 3.5. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Home Service Life Insurance Solicitation.

"**§ 58-60-40. Title and reference.**

This Part may be cited as the "Home Service Disclosure Act".

"**§ 58-60-45. Purpose.**

The purpose of this Part is to establish standards that ensure that meaningful information is provided to the purchasers of insurance policies distributed through the home service distribution system.

"**§ 58-60-50. Definitions.**

As used in this Part:

(1) "Home service distribution system" means a system in which insurance products are marketed, sold, or serviced by agents in person in the home or business of the insured, owner, or premium payor in assigned territories and may be identified as "debits". The policies are issued on a monthly or more frequent premium payment basis and agents are charged with the responsibilities of servicing the debit, which may include the collection of premium payments in the home or designated location on a monthly or more frequent basis, along with other services normally rendered.

(2) "Small face amount life insurance policy" means an insurance policy or certificate with a face amount of fifteen thousand dollars ($15,000) or less.

"**§ 58-60-55. General disclosure requirements.**

(a) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80 and at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) Whether the policyholder is allowed to change the method of premium payment and any conditions for that change;

(2) Whether or not at a subsequent date a policyholder may combine multiple policies from the same insurance company, its affiliates, and its subsidiaries into one policy in order to provide like or enhanced coverage at a comparable or reduced premium to eliminate duplicate administrative costs associated with each policy and, if the option is available:

a. Whether a policyholder will be subject to underwriting when combining multiple policies into one policy; and

b. Whether a policyholder will be subject to a new contestable period, waiting periods, etc., when combining multiple policies into one policy.

(b) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80, an insurer issuing a small face amount life insurance policy through the home service distribution system shall provide the current disclosure included in Appendix A of the NAIC's Home Service Disclosure Model if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

If, for a particular policy form, the cumulative premiums may exceed the face for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefit attributable to the riders.

If an illustration has been provided that satisfies the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code, the disclosure requirements of subsection (b) of this section are deemed to have been met.

"**§ 58-60-60. Disclosure of payment methods.**

In accordance with the disclosure simplification standards set forth in G.S. 58-60-80, at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) What premium savings may be realized by a different method or less frequent mode of premium payment.

(2) That premiums are still due and payable by the person responsible for premium payments even when an agent does not collect the premiums.

(3) The mailing address for payment of premiums to the company.

(4) That the consumer is entitled to receive a receipt for premium payments when premium payments are made in cash or in person.

"**§ 58-60-65. Evidence of payment.**

For every premium collected on a policy of life or disability insurance marketed, sold, or serviced through the home service distribution system in this State, the agent, solicitor, or broker, or any employee acting on the agent, solicitor, or broker's behalf, collecting or receiving the premium in person shall:

(1) Maintain and furnish to the policyholder a receipt indicating payment of premiums, which shall provide the payor with clearly understandable, written evidence of payment at the time the premium is collected. At a minimum it shall clearly show:
   a. The name of the payor.
   b. The name of insured under each policy covered by the premium.
   c. The amount paid.
   d. The date paid.
   e. The date paid-to-status of the policy.
   f. The policy number.
   g. The face amount and type of policy for which the payment will be credited.
   h. The signature of the agent.
   i. The agent's printed name and unique identification number.
   j. The name, complete address, and phone number of the insurer.

(2) Remit to the insurer's home office or applicable district office, or deposit in a fiduciary account, the premium collected on behalf of the policyholder within 10 days of receipt from the premium payor or policy owner. In the event that the insurer utilizes an accounting system based on a monthly list bill, all premiums collected shall be credited from the date of collection. The premium shall be fully applied to that particular account.

"**§ 58-60-70. Proof of policy delivery.**

If an insurance policy marketed, sold, or serviced through the home service distribution system is delivered by an agent, solicitor, or broker, or an employee acting on the agent, solicitor, or broker's behalf, a receipt shall be signed by the purchaser and the agent acknowledging delivery to the purchaser of the policy or contract and the disclosures required by this Part. The receipt shall contain the name of the purchaser, the policy or contract number, the amount of the initial premium payment, and the date the delivery was completed. A policy shall be deemed to have been received six months after the date of issuance if the insured has paid premiums pursuant to the contract. All delivery receipts required by this section shall be retained by the company for not less than three years following delivery and shall be available for inspection upon request of the Commissioner.

"**§ 58-60-75. Company duties.**

Each insurer engaged in the home service distribution system in this State shall make available to the Commissioner for review:

(1) Established written procedures to audit agencies engaged in the home service system of distribution of policies in this State; and

(2) Proof of audits conducted periodically that reasonably ensure that the premium payor's records accurately reflect the premium due date and premium paid-to-status of the policy or policies purchased.

"**§ 58-60-80. Minimum disclosure language standards.**

All disclosure forms shall comply with the readability standards in Article 38 of this Chapter. It is presumed the disclosure form in Appendix A of the NAIC's Home Service Disclosure Model Act complies with this Part."

SECTION 3.6. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Small Face Amount Life Insurance Solicitation.

"**§ 58-60-85. Title and reference.**

This Part may be cited as the "Small Face Amount Life Insurance Disclosure Act".

"**§ 58-60-90. Purpose; intent; and scope.**

(a) The purpose of this Part is to establish standards that ensure meaningful information is provided to the purchasers of small face amount policies.

(b) This Part applies to any life insurance policy or certificate with an initial face amount of fifteen thousand dollars ($15,000) or less.

(c) This Part does not apply to:

(1) Variable life insurance.

(2) Individual and group annuity contracts.

(3) Credit life insurance.

(4) Group or individual policies of life insurance issued to members of an employer group or other permitted group where:

a. Every plan of coverage was selected by the employer or other group representative;

b. Some portion of the premium is paid by the group or through payroll deduction; and

c. Group underwriting or simplified underwriting is used.

(5) Policies and certificates where an illustration has been provided pursuant to the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code.

"**§ 58-60-95. Disclosure requirements.**

(a) An insurer issuing a small face amount policy shall provide the current disclosure included in Appendix A of the NAIC Disclosure for Small Face Amount Life Insurance Policies Model Act if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

(b) If, for a particular policy form, the cumulative premiums may exceed the face amount for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

(c) Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefits attributable to the riders.

"**§ 58-60-100. Insurer duties.**

The insurer and its producers shall have a duty to provide information to policyholders or certificate holders that ask questions about the disclosure statement."

SECTION 3.7. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 4. Regulation of Annuity Solicitation.

"**§ 58-60-105. Title and reference.**

This Part may be cited as the "Annuity Disclosure Act".

"**§ 58-60-110. Purpose; intent; scope.**

(a) The purpose of this Part is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. This Part specifies the minimum information that must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this Part is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

(b) This Part applies to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products.

(2) Immediate and deferred annuities that contain no nonguaranteed elements.

(3) Annuities used to fund:

a. An employee pension plan, which is covered by the Employee Retirement Income Security Act (ERISA);

b. A plan described by section 401(a), 401(k), or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

c. A governmental or church plan defined in section 414, or a deferred compensation plan of a state or local government or a tax exempt organization under section 457, of the Internal Revenue Code;

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

e. Structured settlement annuities;

f. Charitable gift annuities; or

g. Funding agreements.

(c) This Part shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers and there is a

direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement.

"**§ 58-60-115. Definitions.**

As used in this Part:

(1) "Annuity buyer's guide" or "buyer's guide" means the current NAIC Model Buyer's Guide to Fixed Deferred Annuities, including any appendix thereto.

(2) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only or from both determinable and guaranteed elements.

(5) "Disclosure document" means the document the contents of which are described in G.S. 58-60-125.

(6) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(7) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity".

(8) "Guaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(9) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(10) "Structured settlement annuity" means a "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

"**§ 58-60-120. Standards for the disclosure document and buyer's guide.**

(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant, at or before the time of application, shall be given both the disclosure document described in G.S. 58-60-125 and a copy of the buyer's guide.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the buyer's guide no later than five business days after the completed application is received by the insurer.

(1) With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a buyer's guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(2) With respect to an application received via the Internet:

a. Taking reasonable steps to make the buyer's guide available for viewing and printing on the insurer's web site shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's web site shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(3) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the Department for a free annuity buyer's guide. In lieu of the foregoing statement, an insurer may include a statement

that the prospective applicant may contact the insurer for a free annuity buyer's guide.

(c) Where the buyer's guide and disclosure document are not provided at or before the time of application, a free look period of no less than 15 days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under State law or regulation.

"**§ 58-60-125. Contents of disclosure document.**

At a minimum, all of the following information shall be included in the disclosure document required under this Part:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity.

(2) The insurer's name and address.

(3) A description of the contract and its benefits, emphasizing its long-term nature, including the following, if appropriate:

a. The guaranteed, nonguaranteed, and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate.

b. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed.

c. Periodic income options both on a guaranteed and nonguaranteed basis.

d. Any value reductions caused by withdrawals from or surrender of the contract.

e. How values in the contract can be accessed.

f. The death benefit, if available, and how it will be calculated.

g. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract.

h. The impact of any rider, such as a long-term care rider.

(4) The specific dollar amount or percentage charges and fees with an explanation of how they apply.

(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

"**§ 58-60-130. Report to contract owners.**

For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least all of the following information:

(1) The beginning and end date of the current report period.

(2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period.
(3) The total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period.
(4) The amount of outstanding loans, if any, as of the end of the current report period."

PART IV. EMPLOYER-OWNED LIFE INSURANCE DISCLOSURE

SECTION 4. G.S. 58-58-75 reads as rewritten:

"**§ 58-58-75. Insurable interest in life and physical ability of employee or agent.**

(a) An employer, whether a partnership, joint venture, business trust, mutual association, corporation, any other form of business organization, or one or more individuals, or any religious, educational, or charitable corporation, institution or body, has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an employee for the benefit of such employer. Any principal shall have a life insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an agent for the benefit of such principal.

(b) An employee described in subsection (a) of this section shall be insured for the benefit of an employer described in subsection (a) of this section only if the employee receives written notification from the insurer of the existence of the coverage. The notice shall be provided to the employee within 30 days after the effective date of the coverage and shall include a statement that the employer may maintain the life insurance coverage on the employee even after employment is terminated.

(c) For nonkey or nonmanagerial employees, the aggregate amount of coverage shall be reasonably related to the benefits provided to the employees in the aggregate.

(d) With respect to employer-provided pension and welfare plans, the life insurance coverage purchased to finance the plans may only cover the lives of those employees and retirees who, at the time their lives were first insured under the plan, either are participants, or would be eligible to participate, upon the satisfaction of age, service, or similar eligibility criteria in the plan."

PART V. ACTUARIALLY SOUND ASSOCIATION GROUP ACCIDENT AND HEALTH PREMIUM RATES

SECTION 5. G.S. 58-51-80(1a) reads as rewritten:

"(1a) Under a policy issued to an association or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of 500 persons and shall have been organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least five years; and shall have a constitution and bylaws that provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members; (ii) except for credit unions, the

association or associations collect dues or solicit contributions from members; and (iii) the members, other than associate members, have voting privileges and representation on the governing board and committees. The policy is subject to the following requirements:

a. The policy may insure members of the association or associations, employees of the association or associations, or employees of members, or one or more of the preceding or all of any class or classes for the benefit of persons other than the employee's employer.

b. The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members. The premium rates for each association policy shall be developed, and applied to the certificates thereunder, on an actuarially sound basis.

c. Repealed by Session Laws 1997-259, s. 8."

PART VI. INDIVIDUAL ACCIDENT AND HEALTH INSURANCE RENEWAL RATE LIMITATIONS

SECTION 6. G.S. 58-51-95 is amended by adding a new subsection to read:

"(g) For policies subject to this section, an individual health insurer shall not increase an individual's renewal premium for continued health insurance coverage under the terms of the individual's health insurance policy based on any health status-related factors in relation to the individual or a dependent of the individual, including:

(1) Health status.
(2) Medical condition (including both physical and mental illnesses).
(3) Claims experience.
(4) Duration from issue.
(5) Receipt of health care.
(6) Medical history.
(7) Genetic information."

PART VII. LARGE GROUP HEALTH INSURANCE SOLE PROPRIETOR EXEMPTION

SECTION 7. G.S. 58-65-60 is amended by adding a new subsection to read:

"(e3) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 7.1. G.S. 58-67-85 is amended by adding a new subsection to read:

"(d1) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(1), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 7.2. G.S. 58-51-80(c) reads as rewritten:

"(c) The term "employees" as used in this section shall be deemed to include, for the purposes of insurance hereunder, employees of a single employer, the officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. Employees shall be added to the group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term "employee" is defined as a nonseasonal person who works on a full-time basis, with a normal work week of 30 or more hours and who is otherwise eligible for coverage, but does not include a person who works on a part-time, temporary, or substitute basis. The term "employer" as used herein may be deemed to include the State of North Carolina, any county, municipality or corporation, or the proper officers, as such, of any unincorporated municipality or any department or subdivision of the State, county, such corporation, or municipality determined by conditions pertaining to the employment. When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

PART VIII. NEWBORN COVERAGE REINSTATEMENT

SECTION 8. G.S. 58-51-30(b) reads as rewritten:

"(b) Every health benefit plan, as defined in ~~G.S. 58-3-167,~~ G.S. 58-51-115(a)(1), that provides benefits for any sickness, illness, or disability of any minor child or that provides benefits for any medical treatment or service furnished by a health care provider or institution to any minor child shall provide the benefits for those occurrences beginning with the moment of the child's birth if the birth occurs while the plan is in force. Every health benefit plan shall extend coverage to a newborn child without requirements for prior notification unless an additional premium charge to add the dependent is due. If an additional premium charge is due to cover the dependent, the health benefit plan shall cover the newborn child from the moment of birth if the newborn is enrolled within 30 days after the date of birth. Foster children and adopted children shall be treated the same as newborn infants and eligible for coverage on the same basis upon placement in the foster home or placement for adoption. Every health benefit plan shall extend coverage to a foster child or adopted child without requirements for prior notification unless an additional premium charge to add the foster child or adopted child is due. If an additional premium charge is due to cover the foster

child or adopted child, the health benefit plan shall cover the foster child or adopted child upon placement in the foster home or placement for adoption if the foster child or adopted child is enrolled within 30 days after the placement in the foster home or placement for adoption."

PART IX. LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES TECHNICAL CORRECTIONS

SECTION 9. G.S. 58-51-15(a)(2)b. reads as rewritten:

"b. This policy contains a provision limiting coverage for preexisting conditions. Preexisting conditions are covered under this policy _____ (insert number of months or days, not to exceed one year) after the effective date of coverage. Preexisting conditions mean "those conditions for which medical advice, diagnosis, care, or treatment was received or recommended within the one-year period immediately preceding the effective date of the person's coverage." ~~Credit~~ Except for the excepted benefits described in G.S. 58-68-25(b), credit for having satisfied some or all of the preexisting condition waiting periods under previous health benefits coverage shall be given in accordance with G.S. 58-68-30."

SECTION 9.1. G.S. 58-51-15(h) reads as rewritten:

"(h) Preexisting Condition Exclusion Clarification. – Sub-subdivision (a)(2)b. of this section does not apply ~~to:~~ to

~~(1)~~ ~~Policies~~ policies issued to eligible individuals under G.S. 58-68-60.

~~(2) Excepted benefits as described in G.S. 58-68-25(b).~~"

PART X. SMALL EMPLOYER HEALTH REINSURANCE POOL BOARD AMENDMENTS

SECTION 10. G.S. 58-50-150(b) reads as rewritten:

"(b) ~~Within 30 days after January 1, 1992, the Commissioner shall give notice to all carriers of the time and place for the initial organizational meeting, which shall take place within 90 days after the notice from the Commissioner.~~ The members shall select the initial Board, subject to the Commissioner's approval. The Board shall consist of ~~nine~~ six members. There shall be no more than two members of the Board representing any one carrier. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. ~~The voting rights to determine initial Board membership shall be weighted based upon net group health benefit plan premium derived from this State in the previous calendar year. Thereafter, voting~~ Voting rights shall be based on net group health benefit plan premium derived from small employer business. The Board shall at all times, to the extent possible, include at least one domestic insurance company licensed to transact accident and health insurance, one HMO, one nonprofit hospital or medical service plan. ~~Six~~ Five of the members of the Board shall be small employer carriers. In approving selection of the Board, the Commissioner shall assure that all members are fairly represented."

PART XI. EQUITABLE ENROLLMENT PERIOD FOR SUPPLEMENTAL MEDICARE PLANS

SECTION 11. G.S. 58-54-45(a) reads as rewritten:

"(a) In addition to any rule adopted under this Article that is directly or indirectly related to open enrollment, an insurer shall at least make standardized Medicare Supplement Plans A, C, and J available to persons eligible for Medicare by reason of disability before age 65. This action shall be taken without regard to medical condition, claims experience, or health status. To be eligible, a person must submit an application during the six-month period beginning with the first month the person first enrolls in Medicare Part B. For those persons that are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision."

PART XII. REVOCATION AND SUSPENSION TECHNICAL CORRECTION

SECTION 12. G.S. 58-3-100(c) reads as rewritten:

"(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgement of the claim shall be one of the following:

(1) A statement made to the claimant or to the claimant's legal representative advising that the claim is being investigated.
(2) Payment of the claim.
(3) A bona fide written offer of settlement.
(4) A written denial of the claim.

A claimant includes an insured, a beneficiary of life or annuity contract, a health care provider, or a health care facility that is responsible for directly making the claim with an insurer, HMO, service corporation, or MEWA. With respect to a claim under an accident, health, or disability policy, if the acknowledgement sent to the claimant indicates that the claim remains under investigation, within 45 days after receipt by the insurer of the initial claim, the insurer shall send a claim status report to the insured and every 45 days thereafter until the claim is paid or denied. The report shall give details sufficient for the insured to understand why processing of the claim has not been completed and whether the insurer needs additional information to process the claim. If the claim acknowledgement includes information about why processing of the claim has not been completed and indicates whether additional information is needed, it may satisfy the requirement for the initial claim status report. This subsection does not apply to HMOs, service corporations, MEWAs or insurers subject to G.S. 58-3-225."

PART XIII. HEALTH BENEFIT PLAN TRAVEL EXPENSES COVERAGE

SECTION 13. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-3-270. Insurance coverage for travel expenses associated with obtaining care.

(a) As used in this section, the terms "health benefit plan" and "insurer" have the meaning as found in G.S. 58-3-167.

(b) Each health benefit plan shall provide coverage for reasonable transportation, lodging, and boarding expenses incurred by a covered person to access covered health care services when the insurer, through its referral or network contracting arrangements, requires the covered person to travel more than 250 miles from the covered person's residence to obtain those covered health care services from a network provider.

(c) The coverage specified by this section is limited to transportation, lodging and boarding expenses incurred by a covered person when required by the health plan to travel to access covered health care services as provided in subsection (b) of this section when those health care services are not also available from a network provider who is located within 250 miles of the covered person's residence.

(d) The coverage required by this section shall be subject to plan requirements including any overall health care benefit plan aggregate limitations and shall last for the duration of the health care benefit plan's coverage of the treatment subject to this section. An insurer may utilize a per diem limit for the expenses specified in subsection (c) of this section as long as the limit reflects the high-low per diem method as annually published by the Internal Revenue Service or the Domestic Per Diem Rate as published annually by the federal General Services Administration in the area where the health care services are being obtained. All travel, lodging, and boarding expenses in excess of the insurer's per diem or the health benefit plan's aggregate limits shall be the responsibility of the covered person.

(e) An insurer may require prior approval of all expenses subject to this section.

(f) The coverage required by this section shall apply only to those travel, lodging, and boarding expenses incurred by the covered person accessing covered health care services in accordance with this section. If the covered person accessing covered health care services in accordance with this section is a minor, the health benefit plan shall also cover the expenses specified in subsection (c) of this section for a parent or guardian who accompanies the minor."

PART XIV. CREDIT INSURANCE AMENDMENTS

SECTION 14. G.S. 58-57-5 is amended by adding a new subdivision to read:

"(5a) "Critical period coverage" means insurance coverage for which benefits are limited to a stated number of payments or the payments end with the expiration of the policy, whichever is less."

SECTION 14.1. G.S. 58-57-50(b) reads as rewritten:

"(b) The refund of premiums for decreasing term credit life insurance shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy. The refund of premiums for ~~decreasing term credit life insurance in transactions of 60 months duration or less and the refund of premiums for~~ single interest credit property insurance and single interest physical damage insurance shall be

equal to the amount computed by the sum of digits formula known as the "Rule of 78." ~~The refund of premiums for decreasing term credit life insurance in transactions of more than 60 months duration shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy.~~ The refund of premiums for level term credit life insurance and dual interest credit property insurance and dual interest physical damage insurance shall be equal to the pro rata unearned gross premiums."

SECTION 14.2. G.S. 58-57-55 reads as rewritten:

"**§ 58-57-55. Issuance of policies.**

All policies of credit life insurance and credit accident and health insurance shall be issued only by an insurer authorized to do business in this State and shall be issued only through holders of licenses or authorizations issued by the Commissioner. ~~All~~ With the exception of credit insurance issued in accordance with G.S. 58-57-105, all policies of credit life insurance and credit accident and health insurance shall be delivered or issued for delivery in this ~~State only by an insurer authorized to do an insurance business therein, and shall be issued only through holders of licenses or authorizations issued by the Commissioner.~~ State. The enrollment of debtors under a group policy issued to a creditor and authorized under this Article shall not constitute the issuance of a policy of insurance."

SECTION 14.3. G.S. 58-57-60 is amended by adding a new subsection to read:

"(d) A claim acknowledgement shall be sent to the claimant within 30 days after receiving written or electronic notice of the claim. Acknowledgement shall include the following:

(1) A statement made to the insured or the claimant advising that the claim is being investigated.

(2) Payment of the claim.

(3) A bona fide written offer of settlement.

(4) A written denial of the claim."

SECTION 14.4. G.S. 58-57-110 reads as rewritten:

"**§ 58-57-110. Credit unemployment insurance rate standards; policy provisions.**

(a) Each year the Commissioner shall prescribe a minimum incurred loss ratio standard requirement to develop a premium rate reasonable in relation to the benefits provided by credit unemployment insurance coverage. The following requirements must be met:

(1) Coverage is provided or offered, with or without underwriting, to all debtors regardless of age who are working for salary, wages, or other employment income for at least 30 hours per week and have done so for 12 consecutive months;

(2) Coverage sets forth a definition of involuntary unemployment as a loss of employment income that may include, but is not limited to, loss caused by layoff, general strike, termination of employment, or lockout;

(3) Coverage does not contain any exclusion except: debts with irregular monthly payments; voluntary forfeiture of salary, wages, or other

employment income; resignation; retirement; sickness, disease, or normal pregnancy; or loss of income due to termination as a result of willful misconduct that is a violation of some established, definite rule of conduct, a forbidden act, or willful dereliction of duty, or criminal ~~misconduct.~~misconduct;

(4) As long as there is no required time period limitation for registration, the insured may be required to register with the State unemployment office in order to qualify for benefit payments under the credit unemployment coverage. Qualification for State unemployment benefits shall not be required in order to qualify for benefit payments under the credit unemployment coverage.

(b) The Commissioner may approve other policy provisions and coverages consistent with the purposes of unemployment coverage.

(c) Joint coverage rates for credit unemployment insurance shall be one and two-thirds (1 2/3) times the approved single rate of coverage.

(d) The refund provision for credit unemployment insurance shall be equal to the pro rata unearned gross premium."

PART XV. MEDICARE SUPPLEMENTAL INSURANCE POLICY CHANGES

SECTION 15. G.S. 58-54-25(f) reads as rewritten:

"(f) No insurer shall use attained age as a structure or methodology for its Medicare supplement insurance rates. ~~rates unless the structure or methodology is fully disclosed to the applicant at the time of application or to the insured at the time of delivery if the purchase is by mail order. All types of solicitation materials shall clearly indicate that the premiums are based on attained age, which means that those premiums will increase each year. The Commissioner shall prescribe by rule the format and content of the attained age rating disclosure notice. The notice shall include:~~

~~(1) A statement that attained age rating means that rates increase as the insured ages or by the age group in which the insured is.~~

~~(2) An illustration based on actual attained age that states the dollar amount of premium increase for the insured over a period of not less than 10 policy years and that displays the life expectancy of the insured at the beginning of the period.~~

~~(3) A statement that premiums for other Medicare supplement policies that are on issue age bases do not increase as the insured ages.~~

~~(4) A statement that other Medicare supplement policies that are on issue age bases should be compared to policies on attained age bases.~~"

SECTION 15.1 G.S. 58-54-10 reads as rewritten:

"**§ 58-54-10. Standards for policy provisions.**

(a) No policy in force in this State shall contain benefits that duplicate benefits provided by Medicare.

(b) The Commissioner shall adopt rules to establish specific standards for provisions of policies. Such standards shall be in addition to and in accordance with applicable State law. No requirement of State law relating to minimum required policy

benefits, other than the minimum standards contained in this Article, applies to policies. The standards may include without limitation to: terms of renewability; initial and subsequent conditions of eligibility; nonduplication of coverage; probationary periods; benefit limitations, exceptions, and reductions; elimination periods; requirements for replacement; recurrent conditions; and definitions of terms.

(c) The Commissioner may adopt rules that specify prohibited policy provisions not otherwise specifically authorized by State law that, in the opinion of the Commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a policy.

(d) Notwithstanding any other provision of State law, a policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. A policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(e) Repealed by Session Laws 1991 (Regular Session, 1992), c. 815, s. 3.

(f) An insurer shall use issue age as a structure or methodology for its Medicare supplement insurance rates. An insurer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the Commissioner.

(g) Except as otherwise provided in this subsection, an insurer shall not file for approval with the Commissioner more than one policy or certificate of each type for each standard policy. An insurer may offer, with the approval of the Commissioner, up to four additional policies or certificates of the same type for the same standard policy, one for each of the following:

(1) The inclusion of new or innovative benefits.

(2) The addition of either direct response or agent marketing methods.

(3) The addition of either guaranteed issue or underwritten coverage.

(4) The offering of coverage to individuals eligible for Medicare by reason of disability.

As used in this section, "type" means an individual policy, a group policy, an individual Medicare select policy, or a group Medicare select policy.

(h) Except as otherwise provided in this subsection, an insurer shall continue to make available for purchase any policy or certificate issued on and after January 1, 2004 that has been approved by the Commissioner. A policy or certificate shall not be considered to be available for purchase unless the insurer has actively offered the policy or certificate for sale in the immediately preceding 12 month period.

(i) An insurer may discontinue the availability of a policy or certificate if the insurer provides to the Commissioner in writing its decision to discontinue at least 30 days prior to the effective date of the discontinuance. Upon providing notice to the Commissioner, the insurer shall no longer offer for sale the policy or certificate in this State. An insurer that discontinues the availability of a policy or certificate pursuant to this subsection shall not file for approval a new policy or certificate of the same type for the same standard Medicare supplement policy as the discontinued policy or certificate for a period of five years from the effective date of the discontinuance. The

period of discontinuance may be reduced if the Commissioner determines that a shorter period is appropriate. The following shall be considered a discontinuance under this subsection:

(1) The sale or transfer of the insurer's Medicare supplement business to another insurer.

(2) A change in the rating structure or methodology of the policy or certificate unless:

a. The insurer provides actuarial memorandum, in a form and manner prescribed by the Commissioner, describing the manner in which the revised rating structure or methodology and resultant rates differ from the existing rating structure or methodology and rates, and

b. The insurer does not subsequently put into effect a change of rates or rating factors that would cause a change in the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum. The Commissioner may approve a change to the differential if the Commissioner finds the change to be in the public interest."

PART XVI. EFFECT OF HEADINGS, SEVERABILITY, AND EFFECTIVE DATES

SECTION 16. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SECTION 16.1. If any section or provision of this act is declared unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional, preempted, or otherwise invalid.

SECTION 16.2. Sections 1 through 8 and Sections 9, 9.1, 13, 14, 14.1, 14.2, 14.3, 14.4, 15, and 15.1 of this act become effective January 1, 2004, and apply to policies or certificates issued or renewed on or after that date. The remainder of this act is effective when it becomes law and applies to policies or certificates issued or renewed on or after that date.

HOUSE BILL 339:
Life and Health Omnibus-AB

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Wright
Date:	June 3, 2003	**Summary by:**	Tim Hovis
Version:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 339 makes numerous substantive and technical changes to laws governing the regulation of insurance including:***

Conforms Article 56 of Chapter 58 governing third party administrators, to the National Association of Insurance Commissioners (NAIC) model act on third party administrators.

Amends G.S. 58-58-145 which defines group annuity contracts, to require the insurer of such contracts to issue individual certificates of coverage to each annuitant.

Amends current disclosure requirements regarding the solicitation of life insurance products and annuities.

Amends G.S. 58-58-75 which gives a principle or an employer an insurable interest in the life or physical ability of an employee or agent, to require insurers to notify employees of the existence of such policies.

Amends G.S. 58-51-80 which defines group accident and health insurance, to require that association premium rates for accident and health insurance be actuarially sound and that associations be rated as a single group when the coverage provided is not employer-based.

Amends G.S. 58-51-95 to limit an insurer's ability to use an individual's own claims' experience when developing the individual's renewal rates on individual health insurance policies.

Amends G.S. 58-65-60 governing subscribes' contracts, to exempt a sole proprietor from the full-time basis or the 30-hour workweek requirements to be eligible for large group health coverage like the proprietor's full-time employees.

Adds a new section to Article 3 to require group health insurers for an employer to provide upon the policyholders' request, the group's experience information.

Amends G.S. 58-54-45 governing the issuance of Medicare Supplement Plans by reason of disability, to require insurer to allow persons retroactively enrolled in Medicare Part B the same six-month open enrollment period for Medicare Supplemental Plans as person enrolled in Medicare Part B without a retroactive effective date of coverage.

Adds a new section to Article 3 to require health benefit plans to provide coverage for designated travel expenses when the required distance traveled threshold is met.

The act (except for sections 10-12) becomes effective January 1, 2004. Sections 10, 11, and 12 (which include technical corrections) become effective when the act becomes law.

BILL ANALYSIS: Frank Folger, from the Department of Insurance provided the following section-by-section explanation.

PART I. THIRD PARTY ADMINISTRATOR REWRITE (Sections 1 –1.12). This part adopts the NAIC model statute, which provides reciprocity, among other benefits.

Section 1. Repeals the existing definitions section for Article 56 – Third Party Administrators-G.S. 58-56-2.

Section 1.1 enacts new G.S. 58-56-2 with revised and expanded definitions. Added terms include "insurance producer", "nonresident administrator" and "Uniform Application".

Section 1.2 makes technical clarifying changes to the wording of G.S. 58-56-6., governing the written agreement requirements.

Section 1.3 rewrites and reorganizes portions of G.S. 58-56-16 regarding Commissioner access to third party administrator (TPA) books and records and adds new subsections (e) through (i) to:

- Provide that TPA records and books in the possession or control of the Commissioner are confidential and privileged, not public record, not subject to discovery, not subject to subpoena, and inadmissible in evidence in any private civil action; and provide that immunity from testifying on the documents applies to the Commissioner and anyone receiving that material while acting under the authority of the Commissioner.
- Provide that the Commissioner can share such material with and receive such material from other state, federal and international regulatory and law enforcement agencies and the NAIC, provided it is agreed the confidentiality and privilege will be maintained; and can enter into agreements governing the sharing of such material consistent with the rules in that subsection.
- Provide that disclosure by the Commissioner does not constitute waiver of the privilege or claim of confidentiality;
- Clarify that the confidentiality and privilege requirements do not restrict the Commissioner from releasing final adjudicated action including for cause terminations.

Section 1.4. Repeals the existing TPA licensing statute.

Section 1.5. Enacts new G.S. 58-56-52. Home state certificate of authority or license. This new statute:

- Provides for licensure or issuance of a certificate of authority by a TPA's home state (as defined in G.S. 58-56-3) upon application using the Uniform Application and submission of a $100 filing fee. The Uniform Application must include or be accompanied by designated organizational documents, bylaws and internal regulatory documents, NAIC Biographical Affidavits for the officers, directors and all individuals responsible for the conduct of the affairs of the applicant, audited financial statements, a description of the business plan of the TPA, and any other pertinent information..
- Requires the TPA to provide for inspection and examination by the Commissioner all TPA contracts with insurers or others using the TPA's services and all accounts, records and files.
- Authorizes the Commissioner to refuse to issue a certificate of authority or license to a TPA upon determining that the TPA or any individual responsible for conducting the affairs of the TPA:
  - Is not competent
  - Is not trustworthy

- Is not financially responsible
- Is not of good personal and business reputation
- Has had an insurance or an administrator certificate of authority or license denied or revoked for cause by any jurisdiction
- Or upon determining that any of the grounds for denial, suspension or revocation of a certificate of authority under G.S. 58-56-72 exists.

- Provides for the perpetuity of a license or certificate of authority.
- Requires the TPA to notify the Commissioner of any material change in change of ownership, control, or other fact or circumstance affecting its qualification for a certificate of authority or license and requires the Commissioner to notify the producer database maintained by the NAIC or its affiliates or subsidiaries.

Section 1.6. Repeals the existing provision on waiver of application for license, G.S. 58-56-56.

Section 1.7. Enacts new G.S.58-56-57. Registration requirement, to require any person underwriting, collecting charges or premiums from, or adjusting or settling claims on NC residents in connection with a self-funded plan for life, health or annuity coverage to register annually with the Commissioner.

Section 1.8. Enacts new G.S. 58-56-62 to require each TPA licensed under G.S. 58-56-52 to file an annual report, including an independent CPA-audited financial report verified by at least two officers of the TPA with contents and format as prescribed by the Commissioner. The annual report must include the names and addresses of all the insurers with which the TPA has contracted in the past fiscal year and must be submitted along with an annual $100 filing fee. The Commissioner must review the annual report before September 1 of each year and either certify that, according to the annual report, the TPA has a positive net worth and is in good standing, or note any deficiencies found in the annual report; or update the aforementioned NAIC electronic database consistent with the Commissioner's review and assessment.

Section 1.9. Repeals existing G.S. 58-56-66 Grounds for suspension or revocation of license.

Section 1.10. Enacts new G.S. 58-56-67. Nonresident administrator certificate of authority, which:

- Requires any TPA performing TPA services in N.C. that does not carry a N.C. license or certificate of authority to file a Uniform Application with the Commissioner accompanied by certificate or license from the TPA's home state and that state has adopted the NAIC Third Party Administrator Statute or substantially similar laws governing TPAs in order to obtain a nonresident administrator certificate of authority for N.C.
- Requires a $100 filing fee as part of the application process.
- Subject the nonresident TPA to examination of its accounts, records, and files by the Commissioner.
- Exempts from the requirements of a nonresident certificate of authority nonresident TPAs that only perform administrator services on a group policy or plan with no more 100 insureds residing in N.C.
- Authorizes the Commissioner to refuse to issue a nonresident certificate of authority if the Commissioner determines that events or information obtained following the licensure of the TPA in its home state, the TPA cannot satisfy the requirements of Article 56 or

grounds exist for the home state's suspension or revocation of the TPA's license or certificate.

Section 1.11. Enacts new G.S. 58-56-72 to require denial, suspension or revocation of certificate of authority if the Commissioner finds the TPA:

- Is financially unsound
- Is using methods or practices rendering its future transactions hazardous or injurious to insured persons or the public.
- Has failed to pay any judgment rendered against it in N.C. within 60 days after the judgment has become final.

The Commissioner, after notice and hearing, may deny, suspend, or revoke the certificate of authority or license if the Commissioner finds the TPA:

- Has violated any lawful rule or order of the Commissioner or any provision of the N.C. insurance laws.
- Or any person or entity exercising control of the TPA has refused to cooperate with examination by the Commissioner.
- Has, without cause, refused to pay proper claims or fulfill its contractual obligations.
- Fails to satisfy, at any time, the conditions upon which the license or certificate of authority was initially granted.
- Or any of the individuals responsible for the conduct of the TPA enters a plea or guilt or nolo contendere or is found guilty of a felony.
- Is under suspension or revocation in another state.
- Has failed to timely file its annual report pursuant to G.S. 58-56-62 if a resident TPA or its statement and filing fee, as applicable, if a nonresident administrator.

The Commissioner may without advance notice or hearing, immediately suspend the certificate of authority or license if the Commissioner finds that one or more of the following circumstances exist:

- The TPA is insolvent or impaired.
- A proceeding for receivership, rehabilitation or other delinquency proceeding has been instituted in any state.
- The TPA's financial condition or business practices pose an imminent threat to the public health, safety or welfare of N.C. citizens.

The Commissioner may impose a fine in lieu of suspension or revocation.

Section 1.12. Prohibits acting as a TPA in N.C. without a resident certificate of authority or a non-resident certificate of authority.

PART II. GROUP ANNUITY CONTRACTS

Section 2. Amends G.S. 58-58-145 requires group annuity insurers to issue certificates of coverage to each annuitant via the policyholder on a form approved by the Commissioner.

PART III. DISCLOSURES FOR ANNUITIES AND LIFE INSURANCE

Sections 3. through 3.7. Adopts the new NAIC models on Annuity, Home Service Life Insurance and Small Face Amount Life Insurance Disclosure and updates our current life insurance disclosure provisions in Article 60 of Chapter 58 to reflect the current NAIC Life Insurance Disclosure model act.

This Part reorganizes Article 60 to create a life insurance and annuity product disclosure article, with separate parts for each different product disclosure requirement. Each model specifically addresses disclosure requirements to assist the consumer when making a purchasing decision by requiring notice of the feature, including potentially negative aspects of each product. For example:

(1) Sellers of small face life insurance (insurance with a face amount less than $15,000) would have to disclose up front that premiums paid-in could exceed the face value of the policy, if that is a possibility at any time;

(2) Sellers of life insurance through the home service distribution system must disclose whether the policyholder is allowed to change the method of premium payment, whether the policyholder can combine multiple policies from the same company or its affiliates or subsidiaries into one policy and what the impact, if any, such a consolidation would have regarding underwriting, waiting periods, contestable periods and the like, and they would have to provide and maintain evidence of payment of premiums; and

(3) Sellers of annuities would have to provide to the applicant for an annuity a copy of the NAIC Model Guide to Fixed Deferred Annuities and a disclosure document, containing information on the insurer, specifics of the contract including its long-term nature, the specific amount of charges applicable to the contract, and information on the variability of guaranteed rates and the current guaranteed rate.

PART IV. EMPLOYER OWNED LIFE INSURANCE DISCLOSURE

Section 4. Amends G.S. 58-58-75 to require employers that purchase life insurance policies on the lives of their employees for the benefit of the employer to disclose that practice to its employees within 30 days of the effective date of the coverage and also notify the employees that the policy can be maintained even after termination of employment with the employer.

Part V. Requires association group accident and health premium rates to be actuarially sound and to rate associations as a single group when the coverage is not employer based.

This Part reorganizes Article 60 to create a life insurance and annuity product disclosure article, with separate parts for each different product disclosure requirement. Each model specifically addresses disclosure requirements to assist the consumer when making a purchasing decision by requiring notice of the potentially negative aspects of each product. For example: sellers of small face life insurance (insurance with a face amount less than $15,000) would have to disclose that premiums paid in could exceed the face value of the policy.

Part IV. EMPLOYER-OWNED LIFE INSURANCE DISCLOSURE

Section 4. Amends G.S. 58-58-75 to require employers that purchase life insurance policies on the lives of their employees for the benefit of the employer to disclose that practice to its employees within 30 days of the effective date of the coverage and, if applicable, that these employer-owned life insurance (sometimes referred to as COLI for "corporate-owned life insurance") policies can be maintained after the employment has terminated.

Part V. ACTUARIALLY SOUND ASSOCIATION GROUP ACCIDENT AND HEALTH PREMIUM RATES

Section 5. Amends G.S. 58-51-80 to requires association group accident and health premium rates to be actuarially sound and to rate associations as a single group when the coverage is not employer based in order to prevent reunderwriting practices in which insurers are re-rating individual members in (non-employer based) associations as single one man groups each, rather than using the entire association's experience to determine renewal rates.

Part VI. INDIVIDUAL ACCIDENT AND HEALTH INSURANCE RENEWAL RATE LIMITATIONS

Section 6. Amends G.S. 58-51-95 to limits an individual accident and health insurer's ability to determine an individual's renewal rate based on the individual's health status-related factors including: health status; medical condition (including both physical and mental illnesses); claims' experience; duration from issue; receipt of health care; medical history; or genetic information.

Part VII. LARGE GROUP HEALTH INSURANCE SOLE PROPRIETOR EXEMPTION

Sections 7. -7.2. Amend G.S. 58-65-60, 58-67-85, and 58-51-80(c) to exempt, for large group health insurance (more than 50 employees), a sole proprietor from the full-time basis or 30 hour workweek requirements in order to be eligible for the same coverage provided to the sole proprietor's employees.

Part VIII. NEWBORN COVERAGE REINSTATEMENT

Section 8. Amends 58-51-30(b) to correct an oversight in a 2001 enactment and again apply newborn coverage provisions to a more comprehensive list of insurance lines rather than just major medical insurance. Before the 2001 Session, newborn coverage requirements applied to generally all types of health insurance coverage that provided coverage to children. When changes were made in the 2001 session to expand coverage to provide for foster and adopted children, an erroneous reference was made to G.S. 58-3-167 and thus coverage requirements were inadvertently limited to apply only to major medical health coverages. This amendment would return coverage to its status before the 2001 error.

Part IX. LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES TECHNICAL CORRECTIONS

Section 9. Amends G.S. 58-51-15(a) (2)b. and 58-51-15(h) to technically correct a definitional problem regarding pre-existing conditions as applied to limited health, supplemental health, and

specified disease policies. HB 760 in the 2001 Session corrected an "unintended consequence" which threatened the availability of limited health, supplement health and specified disease policies. This availability problem was caused by earlier legislation imposing portability requirements on these policies and subjecting them to the same pre-existing conditions rules as other health insurance policies. In correcting the availability problem, HB 760 created a different problem in the form of a definitional gap for "pre-existing condition" respecting these policies. This amendment technically fixes this new problem.

Part X. REQUIRED GROUP HEALTH BENEFIT PLAN EXPERIENCE DISCLOSURES

Section 10. creates a new statute G.S. 58-3-172.1 to require a group health insurer for an employer to provide, upon the group policyholders' request, the group's experience information. Employer groups have complained to the Department that they are unable to shop their health coverage around to other insurers effectively because new insurers want to see the group's claims experience but current insurers are not required to provide that information. This amendment requires insurers to release the information upon request and will address a common complaint over which the Department currently has little or no authority.

Part XI. EQUITABLE ENROLLMENT PERIOD FOR SUPPLEMENTAL MEDICARE PLANS

Section 11. Amends G.S. 58-54-45(a) to allows persons retroactively enrolled in Part B Medicare 6 months to enroll in Medicare Supplement Plans A, C, and J after notice of the retroactive enrollment decision so they are not penalized or precluded from enrolling in those plans. This proposal would assist persons who are eligible for Medicare retroactively. These persons are always disabled under age 65 and by virtue of the retroactive enrollment miss the deadline for open enrollment for Medicare Supplement Plans. This amendment provides that in the case of retroactive enrollment, the Medicare beneficiary should be entitled to a six-month open enrollment for Medicare Supplement Plans, beginning with the month the beneficiary receives notice of the retroactive enrollment, so that the beneficiary is entitled to the same period for enrollment in supplement plans like everyone else who becomes eligible due to a disability.

Part XII. REVOCATION AND SUSPENSION TECHNICAL CORRECTION

Section 12. Amends G.S. 58-3-100(c) to technically correct the revocation and suspension law to include "beneficiary of a life or annuity contract" as a claimant to clarify said beneficiary's entitlement to the acknowledgement of a claim within 30 days of receipt.

Part XIII. HEALTH BENEFIT PLAN TRAVEL EXPENSES COVERAGE

Section 13. Creates a new G.S. 58-3-270 to mandate health benefit plan coverage for certain travel expenses associated with obtaining care when the person must travel more than 250 miles, one way, to obtain treatment. This amendment codifies a long standing Department policy that health benefit plans provide coverage for certain travel expenses for an insured, and a parent/guardian if the insured is a child, when the insurer requires the person to travel a significant distance from their home to obtain in-network care.

Part XIV. CREDIT INSURANCE AMENDMENT

Sections 14. Through 14.4. Amends G.S. 58-57-5, 58-57-50(b), 58-57-55, 58-57-60, and 58-57-110 in Article 57 (Credit Insurance) to codify Departmental policy or to clarify statutory requirements. The amendments:

(1) Define "critical period coverage" – This is a definition presently permitted by the Department.

(2) Allow credit card credit insurance to be provided through out-of-state insurance contracts (consistent with existing market conditions) - Credit card coverages are almost exclusively provided through out-of-state contracts because the large credit card companies are not located in North Carolina. This amendment will allow the continued availability of this type of insurance in North Carolina;

(3) Set an appropriate refund method for decreasing term credit life insurance;

(4) Require acknowledgement of credit insurance claims not paid within 60 days – Currently there are no provisions in the credit insurance provisions to require acknowledgement of a claim. This would bring credit insurance in uniformity with other lines regarding acknowledgement of a claim; and

(5) Allow a requirement of registration with the state unemployment office for involuntary unemployment benefits under a credit unemployment policy but prohibit the placing of a deadline for that registration or qualification for state unemployment benefits to qualify for the insurance benefits – Some Involuntary Unemployment Insurance (IUI) insurers have submitted forms that require an insured to register with the state unemployment office within 15 or 30 days of the loss of employment in order to qualify for credit involuntary unemployment benefits under the coverage. This deadline for registering would restrict payment of an otherwise valid claim. This amendment prohibits IUI insurers from imposing a deadline for registration with the state unemployment office, prohibits conditioning benefits upon qualification for state unemployment benefits but allows a requirement of registration (without deadline) with the state unemployment office in order to qualify for benefits.

PART XV. MEDICARE SUPPLEMENTAL INSURANCE POLICY CHANGES.

Sections 15 and 15.1. These sections would provide that for Medicare supplemental insurance policies, insurers must use issuance age, not attained age, to establish rates.

PART XVI. EFFECT OF HEADINGS, SEVERABILITY AND EFFECTIVE DATES

Sections 16 through 16.2. These sections contain a provision on the naming of headings for parts, contain a severability clause, make sections 1 through 8, 9, 9.1, 13, 14 through 14.4. 15 and 15.1 effective January 1, 2004 and the remainder of the act effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 339

Committee Substitute Favorable 4/24/03

Committee Substitute #2 Favorable 4/30/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H339-CSRG-22 [v.1]

6/3/2003 10:02:04 AM

Short Title: Life and Health Insurance Omnibus.-AB (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO CONFORM NORTH CAROLINA'S THIRD PARTY ADMINISTRATOR ARTICLE TO REVISIONS TO THE NAIC MODEL THIRD PARTY ADMINISTRATOR STATUTE; REQUIRE GROUP ANNUITY INSURERS TO ISSUE INDIVIDUAL CERTIFICATES OF COVERAGE TO EACH ANNUITANT; REORGANIZE ARTICLE 60 OF CHAPTER 58 OF THE GENERAL STATUTES AND AMEND CURRENT DISCLOSURE REQUIREMENTS FOR SOLICITATION OF LIFE INSURANCE PRODUCTS AND ANNUITIES; REQUIRE INSURERS TO NOTIFY EMPLOYEES OF THE EXISTENCE OF EMPLOYER-OWNED LIFE INSURANCE POLICIES WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF COVERAGE; REQUIRE THAT ASSOCIATION PREMIUM RATES FOR ACCIDENT AND HEALTH INSURANCE BE ACTUARIALLY SOUND AND THAT ASSOCIATIONS BE RATED AS A SINGLE GROUP WHEN THE COVERAGE PROVIDED IS NOT EMPLOYER-BASED; LIMIT AN INDIVIDUAL ACCIDENT AND HEALTH INSURER'S USE OF AN INDIVIDUAL'S OWN CLAIMS' EXPERIENCE TO DEVELOP THE INDIVIDUAL'S RENEWAL RATE; EXEMPT A SOLE PROPRIETOR FROM THE FULL-TIME BASIS OR THIRTY-HOUR WORKWEEK REQUIREMENTS TO BE ELIGIBLE FOR LARGE GROUP HEALTH COVERAGE LIKE THE PROPRIETOR'S FULL-TIME EMPLOYEES; CORRECT AN INADVERTENT CROSS-REFERENCE IN ORDER TO REAPPLY NEWBORN COVERAGE TO A MORE COMPREHENSIVE GROUP OF INSURERS; TECHNICALLY CORRECT AN OMISSION REGARDING PROVISIONS GOVERNING PREEXISTING CONDITIONS FOR LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES; DECREASE THE TOTAL NUMBER OF MEMBERS THAT SERVE ON THE

SMALL EMPLOYER REINSURANCE POOL BOARD FROM NINE TO SIX; ALLOW PERSONS RETROACTIVELY ENROLLED IN MEDICARE PART B THE SAME SIX-MONTH OPEN ENROLLMENT PERIOD FOR MEDICARE SUPPLEMENT PLANS AS PERSONS WHO ENROLLED IN MEDICARE PART B WITHOUT A RETROACTIVE EFFECTIVE DATE OF COVERAGE; TECHNICALLY CORRECT THE REVOCATION AND SUSPENSION LAW TO INCLUDE A BENEFICIARY OF A LIFE OR ANNUITY CONTRACT AS A CLAIMANT; MANDATE HEALTH BENEFIT COVERAGE FOR DESIGNATED TRAVEL EXPENSES WHEN THE REQUIRED DISTANCE TRAVELED THRESHOLD IS MET; TO REQUIRE RATE METHODOLOGY UNDER MEDICARE SUPPLEMENTAL INSURANCE POLICIES TO BE BASED ON ISSUE AGE AND TO MAKE OTHER CHANGES TO THE LAW PERTAINING TO MEDICARE SUPPLEMENTAL INSURANCE POLICIES; AND MAKE TECHNICAL CORRECTIONS TO THE CREDIT INSURANCE LAWS.

The General Assembly of North Carolina enacts:

PART I. THIRD PARTY ADMINISTRATOR ACT REWRITE

SECTION 1. G.S. 58-56-2 is repealed.

SECTION 1.1. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-3. Definitions.**

As used in this Article:

(1) "Administrator", "third party administrator", and "TPA" mean a person who directly or indirectly underwrites, collects, or charges premiums from, or adjusts or settles claims on, residents of this State in connection with life, annuity, or health coverage offered or provided by an insurer, except any of the following:

a. An employer, or a wholly owned direct or indirect subsidiary of an employer, on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer.

b. A union on behalf of its members.

c. An insurer that is authorized to transact insurance in this State pursuant to Articles 1 through 67 of this Chapter.

d. An insurance producer licensed to sell life, annuity, or health coverage in this State, whose activities are limited exclusively to the sale of insurance.

e. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.

f. A trust and its trustees, agents, and employees acting pursuant to a trust established in conformity with 29 U.S.C. § 186.

g. A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees and employees acting pursuant to the trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account which

meets the requirements of section 401(f) of the Internal Revenue Code.

h. A credit union or a financial institution that is subject to supervision or examination by federal or State banking authorities, or a mortgage lender, to the extent it collects and remits premiums to licensed insurance producers or to limited lines producers or authorized insurers in connection with loan payments.

i. A credit card issuing company that advances for and collects insurance premiums or charges from its credit card holders who have authorized collection.

j. A person who adjusts or settles claims in the normal course of that person's practice or employment as a licensed attorney and who does not collect charges or premiums in connection with life, annuity, or health coverage.

k. An adjuster licensed by this State whose activities are limited to adjustment of claims.

l. A person licensed as a managing general agent in this State, whose activities are limited exclusively to the scope of activities conveyed under the license.

m. An administrator who is affiliated with an insurer and who only performs the contractual duties (between the administrator and the insurer) of an administrator for the direct and assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator's books and records to the Commissioner, upon a request from the Commissioner.

(2) "Affiliate or affiliated" means an entity or person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Commissioner" means the Commissioner of Insurance of this State.

(4) "Control" means the term as defined in G.S. 58-19-5(2).

(5) "GAAP" means United States generally accepted accounting principles consistently applied.

(6) "Home state" means the District of Columbia and any state or territory of the United States in which an administrator is incorporated or maintains its principal place of business. If neither the state in which the administrator is incorporated nor the state in which it maintains its principal place of business has adopted the NAIC Third Party Administrator Statute, or a substantially similar law governing administrators, the administrator may declare another state in which it conducts business to be its "home state".

(7) "Insurance producer" means a person who sells, solicits, or negotiates a contract of insurance as those terms are defined in this Article.

(8) "Insurer" means an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, and a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(9) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(10) "Nonresident administrator" means a person who is applying for licensure or is licensed in any state other than the administrator's home state.

(11) "Person" means an individual or a business entity.

(12) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(13) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(14) "Underwrites" or "underwriting" includes the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer or self-funded plan and also includes the overall planning and coordinating of a benefits program.

(15) "Uniform Application" means the current version of the NAIC Uniform Application for Third Party Administrators."

SECTION 1.2. G.S. 58-56-6 reads as rewritten:

"**§ 58-56-6. Written agreement necessary.**

(a) No TPA may act as a TPA without a written agreement between the TPA and the insurer. The written agreement shall be retained as part of the official records of both the insurer and the TPA for the duration of the agreement and for five years thereafter. The agreement shall contain all provisions required by this Article, ~~to the extent those requirements apply to the functions performed by the TPA.~~ except insofar as those requirements do not apply to the functions performed by the TPA.

(b) The agreement shall include a statement of duties that the TPA is expected to perform on behalf of the insurer and the ~~kinds of insurance the TPA is to be authorized to administer.~~lines, classes, or types of insurance for which the TPA is to be authorized to administer. The agreement shall provide for underwriting or other standards pertaining to the business underwritten by the insurer.

(c) The insurer or TPA may, with written notice, terminate the written agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the TPA during the pendency of any dispute regarding the cause for termination of the agreement. The insurer ~~must~~ shall fulfill any lawful obligations with

respect to policies affected by the agreement, regardless of any dispute between the insurer and the TPA."

SECTION 1.3. G.S. 58-56-16 reads as rewritten:

"**§ 58-56-16. Records to be kept.**

(a) Every TPA shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance record keeping and must be maintained for a period of at least five years after the date of their creation.

~~(b) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. The Commissioner shall keep confidential any trade secrets contained in those books and records, including the identity and addresses of policyholders and certificate holders, except that the Commissioner may use the information in any judicial or administrative proceeding instituted against the TPA.~~

(c) The insurer shall own the records generated by the TPA pertaining to the insurer, but the TPA shall retain the right to continuing access to books and records to permit the TPA to fulfill all of its contractual obligations to insured parties, claimants, and the insurer.

(d) In the event the insurer and the TPA cancel their agreement, notwithstanding the provisions of subsection (a) of this section, the TPA may, by written agreement with the insurer, transfer all records to a new TPA rather than retain them for five years. In this case, the new TPA shall acknowledge, in writing, that it is responsible for retaining the records of the prior TPA as required in subsection (a) of this section.

(e) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. Any documents, materials, or other information in the possession or control of the Commissioner that are furnished by a TPA, insurer, insurance producer, or an employee or agent thereof acting on behalf of the TPA, insurer, or insurance producer, or obtained by the Commissioner in an investigation shall be confidential by law and privileged, shall not constitute a public record as defined by G.S. 132-1, shall not be subject to subpoena, shall not be subject to discovery, and shall not be admissible in evidence in any private civil action. However, the Commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.

(f) Neither the Commissioner nor any person who receives documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (e) of this section.

(g) In order to assist in the performance of the Commissioner's duties, the Commissioner:

(1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (e) of this section, with other State, federal, and

international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, and with State, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(2) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(3) May enter into agreements governing sharing and use of information consistent with this subsection.

(h) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (g) of this section.

(i) Nothing in this Article shall prohibit the Commissioner from releasing final, adjudicated actions including for-cause terminations that are open to public inspection pursuant to Chapter 132 of the General Statutes or to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or its subsidiaries."

SECTION 1.4. G.S. 58-56-51 is repealed.

SECTION 1.5. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-52. Home state certificate of authority or license.**

(a) A person shall apply to be a TPA in its home state upon the Uniform Application and shall receive a certificate of authority or license from the Commissioner of its home state prior to performing any function of a TPA in this State. Each application shall be accompanied by a nonrefundable filing fee of one hundred dollars ($100.00).

(b) The Uniform Application shall include or be accompanied by the following information and documents:

(1) All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, and other applicable documents and all amendments to those documents.

(2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the applicant.

(3) NAIC Biographical Affidavit for the individuals who are responsible for the conduct of affairs of the applicant, including all members of the

the Commissioner determines that any of the grounds set forth in G.S. 58-56-72 exists with respect to the TPA.

(f) A certificate of authority or license issued under this section shall remain valid, unless surrendered, suspended, or revoked by the Commissioner, for so long as the TPA continues in business in this State and remains in compliance with this Article.

(g) A TPA licensed or applying for licensure under this section shall immediately notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a certificate of authority or license in this State. The Commissioner shall report any such changes to the producer database maintained by the NAIC or affiliates or subsidiaries of the NAIC."

SECTION 1.6. G.S. 58-56-56 is repealed.

SECTION 1.7. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-57. Registration requirement.**

A person who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this State in connection with life, annuity, or health coverage provided by a self-funded plan shall register with the Commissioner annually, verifying its status as herein described in a format prescribed by the Commissioner."

SECTION 1.8. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-62. Annual report and filing.**

(a) Each TPA licensed under G.S. 58-56-52 shall file an annual report for the preceding calendar year with the Commissioner on or before July 1 of each year or within such extension of time as the Commissioner for good cause may grant. The annual report shall include an audited financial statement performed by an independent certified public accountant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the information required under G.S. 58-56-52(b)(4)a. through c. The report shall be in the form and contain such matters as the Commissioner prescribes and shall be verified by at least two officers of the TPA.

(b) The annual report shall include the complete names and addresses of all insurers with which the administrator had agreements during the preceding fiscal year.

(c) At the time of filing its annual report, the administrator shall pay a nonrefundable filing fee of one hundred dollars ($100.00).

(d) The Commissioner shall review the most recently filed annual report of each administrator on or before September 1 of each year. Upon completion of its review, the Commissioner shall either:

(1) Issue a certification to the administrator that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is currently licensed and in good standing, or noting any deficiencies found in the annual report and financial statements; or

(2) Update any electronic database maintained by the National Association of Insurance Commissioners, or its affiliates or subsidiaries, indicating that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is in compliance with existing law, or noting any deficiencies found in the annual report."

SECTION 1.9. G.S. 58-56-66 is repealed.

SECTION 1.10. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-67. Nonresident administrator certificate of authority.**

(a) Unless a TPA has obtained a home state certificate of authority or license in this State under G.S. 58-56-52, any TPA who performs administrator duties in this State shall obtain a nonresident administrator certificate of authority or license in accordance with this section by filing with the Commissioner the Uniform Application accompanied by a letter of certification from the home state of the TPA. In lieu of requiring a TPA to file a letter of certification with the Uniform Application, the Commissioner may verify the nonresident administrator's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries.

(b) A TPA shall not be eligible for a nonresident administrator certificate of authority or license under this section if it does not hold a certificate of authority as a resident in a home state that has adopted the NAIC Third Party Administrator Statute or a substantially similar law governing TPAs.

(c) Except as provided in subsections (b) and (h) of this section, the Commissioner shall issue to the TPA a nonresident administrator certificate of authority or license promptly upon receipt of a complete application.

(d) Unless notified by the Commissioner that the Commissioner is able to verify the nonresident TPA's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners, or its affiliates or subsidiaries, each nonresident TPA annually shall file a statement that its home state administrator certificate of authority or license remains in force and has not been revoked or suspended by its home state during the preceding year. The statement required by this subsection shall be filed by November 1 each year.

(e) At the time of filing the statement required under subsection (d) of this section or if the Commissioner has notified the nonresident administrator that the Commissioner is able to verify the nonresident administrator's home state certificate of authority or license status through an electronic database, the nonresident TPA shall pay, no later than November 1, a nonrefundable filing fee of one hundred dollars ($100.00).

(f) A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

(g) A nonresident TPA is not required to hold a nonresident administrator certificate of authority or license in this State if the TPA's duties in this State are limited to the administration of a group policy or plan of insurance and no more than a total of 100 persons insured for all plans reside in this State.

(h) The Commissioner may refuse to issue a nonresident administrator certificate of authority or license, or delay the issuance of a nonresident administrator certificate of authority or license, if the Commissioner determines that, due to events or information obtained subsequent to the home state's licensure of the TPA, the nonresident TPA cannot satisfy the requirements of this Article or that grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license. If the Commissioner refuses to issue a certificate of authority of license pursuant to this section, the Commissioner shall give written notice of its determination to the Commissioner of the home state, and the Commissioner may delay the issuance of a nonresident administrator certificate of authority to the nonresident TPA until the Commissioner determines that the administrator can satisfy the requirements of this Article and that no grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license."

SECTION 1.11. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-72. Grounds for denial, suspension, or revocation of certificate of authority.**

(a) The certificate of authority or license of a TPA shall be denied, suspended, or revoked if the Commissioner finds that the TPA:

(1) Is in an unsound financial condition;

(2) Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this State hazardous or injurious to insured persons or the public; or

(3) Has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final.

(b) The Commissioner may, after notice and opportunity for hearing, deny, suspend, or revoke the certificate of authority or license of a TPA if the Commissioner finds that the TPA:

(1) Has violated any lawful rule or order of the Commissioner or any provision of the insurance laws of this State;

(2) Has refused to be examined or to produce its accounts, records, and files for examination, or if any individual responsible for the conduct of affairs of the TPA has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination when required by the Commissioner, including:

a. Members of the board of directors, board of trustees, executive committee, or other governing board or committee;

b. The principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company;

c. Any shareholder or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the TPA; and

d. Any other person who exercises control or influence over the affairs of the TPA;

(3) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the TPA to secure full payment or settlement of such claims;

(4) Fails, at any time, to meet any qualification for which issuance of the certificate could have been refused had the failure then existed and been known to the Commissioner;

(5) Or any of the individuals responsible for the conduct of its affairs has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether adjudication was withheld, including:

a. Members of the board of directors, board of trustees, executive committee or other governing board or committee;

b. The principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company;

c. Any shareholder or member holding directly or indirectly ten percent or more of its voting stock, voting securities, or voting interest; and

d. Any other person who exercises control or influence over its affairs;

(6) Is under suspension or revocation in another state; or

(7) Has failed to timely file its annual report pursuant to G.S. 58-56-62 if a resident administrator or its statement and filing fee, as applicable, pursuant to G.S. 58-56-67(d) and (e) if a nonresident administrator.

(c) The Commissioner may, without advance notice or hearing, immediately suspend the certificate of authority or license of a TPA if the Commissioner finds that one or more of the following circumstances exist:

(1) The TPA is insolvent or impaired.

(2) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the TPA has been commenced in any state.

(3) The financial condition or business practices of the TPA otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this State.

(d) If the Commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of authority issued under this part, the Commissioner may, in lieu of suspension or revocation, impose a fine upon the TPA."

SECTION 1.12. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-73. Prohibited practices.**

No person shall act as, offer to act as, or hold himself or herself out as a TPA in this State without a valid domestic or nonresident administrator certificate of authority issued by the Commissioner."

PART II. GROUP ANNUITY CONTRACTS

SECTION 2. G.S. 58-58-145 reads as rewritten:

"**§ 58-58-145. Group annuity contracts defined; ~~requirements.~~requirements; issuance of individual certificates.**

(a) Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable to more than one person, is a group annuity contract. The person, firm or corporation to whom or to which such contract is issued, as herein provided, is the holder of the contract. The term "annuitant" means any person to whom or which payments are made under the group annuity contract. No authorized insurer shall deliver or issue for delivery in this State any group annuity contract except upon a group of annuitants that conforms to the following: under a contract issued to an employer, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, the stipulated payments on which shall be paid by the holder of such contract either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the employees covered by such contract, and providing a plan of retirement annuities under a plan which permits all of the employees of such employer or of any specified class or classes thereof to become annuitants. Any such group of employees may include retired employees, and may include officers and managers as employees, and may include the employees of subsidiary or affiliated corporations of a corporation employer, and may include the individual proprietors, partners and employees of affiliated individuals and firms controlled by the holders through stock ownership, contract or otherwise.

(b) The insurer of a group annuity contract shall issue to the policyholder, within 30 days of the effective date of the group annuity contract, an individual certificate for delivery to each annuitant which:

(1) Identifies the annuity to which the annuitant is entitled.

(2) States the name of the person to whom the annuity is payable.

(3) Discloses all of the rights and obligations of the insurer, the policyholder, the annuitant, and the persons to whom the annuity is payable with respect to the group annuity contract.

G.S. 58-3-150 applies to the form of the individual certificate required by this subsection.

(c) Each group annuity contract shall include a provision that the insurer will issue to the policyholder within 30 days of the effective date of the contract, for delivery to each annuitant, an individual certificate setting forth the information described in subsection (b) of this section."

PART III. DISCLOSURES FOR ANNUITIES AND LIFE INSURANCE

SECTION 3. The title of Article 60 of Chapter 58 of the General Statutes reads as rewritten:

"Article 60.

~~Regulation of Life Insurance Solicitation.~~

Standards of Disclosure for Annuities and Life Insurance."

SECTION 3.1. Article 60 of Chapter 58 of the General Statues is amended by designating G.S. 58-60-1 through G.S. 58-60-35 as:

"Part 1. Regulation of Life Insurance Solicitation."

SECTION 3.2. G.S. 58-60-1 reads as rewritten:

"**§ 58-60-1. ~~Purpose of Article.~~Short title; purpose.**

(a) This Part may be cited as the "Life Insurance Disclosure Act".

(b) The purpose of this ~~Article~~ Part is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for ~~their~~ the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and to improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

This ~~Article~~ Part does not prohibit an insurer ~~to use~~ from using additional material ~~which~~ that is not in violation of Articles 1 through 64 of this Chapter nor any other statute or regulation."

SECTION 3.3. G.S. 58-60-5 reads as rewritten:

"**§ 58-60-5. ~~Scope of Article;~~ Scope; exemptions.**

(a) Except as otherwise provided in this ~~Article,~~ Part, this ~~Article~~ Part applies to any solicitation, negotiation or procurement of life insurance occurring within this State. This ~~Article~~ Part applies to any issuer of a life insurance contract, including fraternal benefit societies.

(b) Unless otherwise specifically included, this ~~Article~~ Part does not apply to:

(1) ~~Annuities,~~Individual group annuity contracts.

(2) Credit life ~~insurance,~~insurance.

(3) Group life ~~insurance,~~ insurance (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy).

(4) Life insurance policies issued in connection with pension and welfare plans as defined by and that are subject to the federal Employee Retirement Income Security Act of 1974 ~~(ERISA),~~(ERISA).

(5) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(c) The policy summary in this ~~Article~~ Part is not required for policies that are sold subject to rules adopted by the Commissioner for life insurance illustrations."

SECTION 3.4. G.S. 58-60-10(7)k. reads as rewritten:

"k. The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in subparagraph e of this paragraph shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space. If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor, it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in this State."

SECTION 3.5. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Home Service Life Insurance Solicitation.

"**§ 58-60-40. Title and reference.**

This Part may be cited as the "Home Service Disclosure Act".

"**§ 58-60-45. Purpose.**

The purpose of this Part is to establish standards that ensure that meaningful information is provided to the purchasers of insurance policies distributed through the home service distribution system.

"**§ 58-60-50. Definitions.**

As used in this Part:

(1) "Home service distribution system" means a system in which insurance products are marketed, sold, or serviced by agents in person in the home or business of the insured, owner, or premium payor in assigned territories and may be identified as "debits". The policies are issued on a monthly or more frequent premium payment basis and agents are charged with the responsibilities of servicing the debit, which may include the collection of premium payments in the home or designated location on a monthly or more frequent basis, along with other services normally rendered.

(2) "Small face amount life insurance policy" means an insurance policy or certificate with a face amount of fifteen thousand dollars ($15,000) or less.

"**§ 58-60-55. General disclosure requirements.**

(a) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80 and at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) Whether the policyholder is allowed to change the method of premium payment and any conditions for that change;

(2) Whether or not at a subsequent date a policyholder may combine multiple policies from the same insurance company, its affiliates, and its subsidiaries into one policy in order to provide like or enhanced coverage at a comparable or reduced premium to eliminate duplicate administrative costs associated with each policy and, if the option is available:

a. Whether a policyholder will be subject to underwriting when combining multiple policies into one policy; and

b. Whether a policyholder will be subject to a new contestable period, waiting periods, etc., when combining multiple policies into one policy.

(b) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80, an insurer issuing a small face amount life insurance policy through the home service distribution system shall provide the current disclosure included in Appendix A of the NAIC's Home Service Disclosure Model if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

If, for a particular policy form, the cumulative premiums may exceed the face for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefit attributable to the riders.

If an illustration has been provided that satisfies the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code, the disclosure requirements of subsection (b) of this section are deemed to have been met.

"**§ 58-60-60. Disclosure of payment methods.**

In accordance with the disclosure simplification standards set forth in G.S. 58-60-80, at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) What premium savings may be realized by a different method or less frequent mode of premium payment.

(2) That premiums are still due and payable by the person responsible for premium payments even when an agent does not collect the premiums.

(3) The mailing address for payment of premiums to the company.

(4) That the consumer is entitled to receive a receipt for premium payments when premium payments are made in cash or in person.

"**§ 58-60-65. Evidence of payment.**

For every premium collected on a policy of life or disability insurance marketed, sold, or serviced through the home service distribution system in this State, the agent, solicitor, or broker, or any employee acting on the agent, solicitor, or broker's behalf, collecting or receiving the premium in person shall:

(1) Maintain and furnish to the policyholder a receipt indicating payment of premiums, which shall provide the payor with clearly understandable, written evidence of payment at the time the premium is collected. At a minimum it shall clearly show:

a. The name of the payor.

b. The name of insured under each policy covered by the premium.

c. The amount paid.

d. The date paid.

e. The date paid-to-status of the policy.

f. The policy number.

g. The face amount and type of policy for which the payment will be credited.

h. The signature of the agent.

i. The agent's printed name and unique identification number.

j. The name, complete address, and phone number of the insurer.

(2) Remit to the insurer's home office or applicable district office, or deposit in a fiduciary account, the premium collected on behalf of the policyholder within 10 days of receipt from the premium payor or policy owner. In the event that the insurer utilizes an accounting system based on a monthly list bill, all premiums collected shall be credited from the date of collection. The premium shall be fully applied to that particular account.

"**§ 58-60-70. Proof of policy delivery.**

If an insurance policy marketed, sold, or serviced through the home service distribution system is delivered by an agent, solicitor, or broker, or an employee acting on the agent, solicitor, or broker's behalf, a receipt shall be signed by the purchaser and the agent acknowledging delivery to the purchaser of the policy or contract and the disclosures required by this Part. The receipt shall contain the name of the purchaser, the policy or contract number, the amount of the initial premium payment, and the date the delivery was completed. A policy shall be deemed to have been received six months after the date of issuance if the insured has paid premiums pursuant to the contract. All delivery receipts required by this section shall be retained by the company for not less than three years following delivery and shall be available for inspection upon request of the Commissioner.

"**§ 58-60-75. Company duties.**

Each insurer engaged in the home service distribution system in this State shall make available to the Commissioner for review:

(1) Established written procedures to audit agencies engaged in the home service system of distribution of policies in this State; and

(2) Proof of audits conducted periodically that reasonably ensure that the premium payor's records accurately reflect the premium due date and premium paid-to-status of the policy or policies purchased.

"**§ 58-60-80. Minimum disclosure language standards.**

All disclosure forms shall comply with the readability standards in Article 38 of this Chapter. It is presumed the disclosure form in Appendix A of the NAIC's Home Service Disclosure Model Act complies with this Part."

SECTION 3.6. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Small Face Amount Life Insurance Solicitation.

"**§ 58-60-85. Title and reference.**

This Part may be cited as the "Small Face Amount Life Insurance Disclosure Act".

"**§ 58-60-90. Purpose; intent; and scope.**

(a) The purpose of this Part is to establish standards that ensure meaningful information is provided to the purchasers of small face amount policies.

(b) This Part applies to any life insurance policy or certificate with an initial face amount of fifteen thousand dollars ($15,000) or less.

(c) This Part does not apply to:

(1) Variable life insurance.

(2) Individual and group annuity contracts.

(3) Credit life insurance.

(4) Group or individual policies of life insurance issued to members of an employer group or other permitted group where:

a. Every plan of coverage was selected by the employer or other group representative;

b. Some portion of the premium is paid by the group or through payroll deduction; and

c. Group underwriting or simplified underwriting is used.

(5) Policies and certificates where an illustration has been provided pursuant to the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code.

"**§ 58-60-95. Disclosure requirements.**

(a) An insurer issuing a small face amount policy shall provide the current disclosure included in Appendix A of the NAIC Disclosure for Small Face Amount Life Insurance Policies Model Act if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

(b) If, for a particular policy form, the cumulative premiums may exceed the face amount for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

(c) Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefits attributable to the riders.

"**§ 58-60-100. Insurer duties.**

The insurer and its producers shall have a duty to provide information to policyholders or certificate holders that ask questions about the disclosure statement."

SECTION 3.7. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 4. Regulation of Annuity Solicitation.

"**§ 58-60-105. Title and reference.**

This Part may be cited as the "Annuity Disclosure Act".

"**§ 58-60-110. Purpose; intent; scope.**

(a) The purpose of this Part is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. This Part specifies the minimum information that must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this Part is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

(b) This Part applies to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products.

(2) Immediate and deferred annuities that contain no nonguaranteed elements.

(3) Annuities used to fund:

a. An employee pension plan, which is covered by the Employee Retirement Income Security Act (ERISA);

b. A plan described by section 401(a), 401(k), or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

c. A governmental or church plan defined in section 414, or a deferred compensation plan of a state or local government or a tax exempt organization under section 457, of the Internal Revenue Code;

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

e. Structured settlement annuities;

f. Charitable gift annuities; or

g. Funding agreements.

(c) This Part shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement.

"**§ 58-60-115. Definitions.**

As used in this Part:

(1) "Annuity buyer's guide" or "buyer's guide" means the current NAIC Model Buyer's Guide to Fixed Deferred Annuities, including any appendix thereto.

(2) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only or from both determinable and guaranteed elements.

(5) "Disclosure document" means the document the contents of which are described in G.S. 58-60-125.

(6) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(7) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity".

(8) "Guaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(9) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(10) "Structured settlement annuity" means a "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

"**§ 58-60-120. Standards for the disclosure document and buyer's guide.**

(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant, at or before the time of application, shall be given both the disclosure document described in G.S. 58-60-125 and a copy of the buyer's guide.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the buyer's guide no later than five business days after the completed application is received by the insurer.

(1) With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a buyer's guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(2) With respect to an application received via the Internet:

a. Taking reasonable steps to make the buyer's guide available for viewing and printing on the insurer's web site shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's web site shall be deemed to satisfy the requirement that the disclosure

document be provided no later than five business days after receipt of the application.

(3) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the Department for a free annuity buyer's guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity buyer's guide.

(c) Where the buyer's guide and disclosure document are not provided at or before the time of application, a free look period of no less than 15 days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under State law or regulation.

"**§ 58-60-125. Contents of disclosure document.**

At a minimum, all of the following information shall be included in the disclosure document required under this Part:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity.

(2) The insurer's name and address.

(3) A description of the contract and its benefits, emphasizing its long-term nature, including the following, if appropriate:

a. The guaranteed, nonguaranteed, and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate.

b. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed.

c. Periodic income options both on a guaranteed and nonguaranteed basis.

d. Any value reductions caused by withdrawals from or surrender of the contract.

e. How values in the contract can be accessed.

f. The death benefit, if available, and how it will be calculated.

g. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract.

h. The impact of any rider, such as a long-term care rider.

(4) The specific dollar amount or percentage charges and fees with an explanation of how they apply.

(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

"**§ 58-60-130. Report to contract owners.**

For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least all of the following information:

(1) The beginning and end date of the current report period.

(2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period.

(3) The total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period.

(4) The amount of outstanding loans, if any, as of the end of the current report period."

PART IV. EMPLOYER-OWNED LIFE INSURANCE DISCLOSURE

SECTION 4. G.S. 58-58-75 reads as rewritten:

"**§ 58-58-75. Insurable interest in life and physical ability of employee or agent.**

(a) An employer, whether a partnership, joint venture, business trust, mutual association, corporation, any other form of business organization, or one or more individuals, or any religious, educational, or charitable corporation, institution or body, has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an employee for the benefit of such employer. Any principal shall have a life insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an agent for the benefit of such principal.

(b) An employee described in subsection (a) of this section shall be insured for the benefit of an employer described in subsection (a) of this section only if the employee receives written notification from the insurer of the existence of the coverage. The notice shall be provided to the employee within 30 days after the effective date of the coverage and shall include a statement that the employer may maintain the life insurance coverage on the employee even after employment is terminated.

(c) For nonkey or nonmanagerial employees, the aggregate amount of coverage shall be reasonably related to the benefits provided to the employees in the aggregate.

(d) With respect to employer-provided pension and welfare plans, the life insurance coverage purchased to finance the plans may only cover the lives of those employees and retirees who, at the time their lives were first insured under the plan, either are participants, or would be eligible to participate, upon the satisfaction of age, service, or similar eligibility criteria in the plan."

PART V. ACTUARIALLY SOUND ASSOCIATION GROUP ACCIDENT AND HEALTH PREMIUM RATES

SECTION 5. G.S. 58-51-80(1a) reads as rewritten:

"(1a) Under a policy issued to an association or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of 500 persons and shall have been

organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least five years; and shall have a constitution and bylaws that provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members; (ii) except for credit unions, the association or associations collect dues or solicit contributions from members; and (iii) the members, other than associate members, have voting privileges and representation on the governing board and committees. The policy is subject to the following requirements:

a. The policy may insure members of the association or associations, employees of the association or associations, or employees of members, or one or more of the preceding or all of any class or classes for the benefit of persons other than the employee's employer.

b. The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members. The premium rates for each association policy shall be developed, and applied to the certificates thereunder, on an actuarially sound basis.

c. Repealed by Session Laws 1997-259, s. 8."

PART VI. INDIVIDUAL ACCIDENT AND HEALTH INSURANCE RENEWAL RATE LIMITATIONS

SECTION 6. G.S. 58-51-95 is amended by adding a new subsection to read:

"(g) For policies subject to this section, an individual health insurer shall not increase an individual's renewal premium for continued health insurance coverage under the terms of the individual's health insurance policy based on any health status-related factors in relation to the individual or a dependent of the individual, including:

(1) Health status.

(2) Medical condition (including both physical and mental illnesses).

(3) Claims experience.

(4) Receipt of health care.

(5) Medical history."

PART VII. LARGE GROUP HEALTH INSURANCE SOLE PROPRIETOR EXEMPTION

SECTION 7. G.S. 58-65-60 is amended by adding a new subsection to read:

"(e3) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 7.1. G.S. 58-67-85 is amended by adding a new subsection to read:

"(d1) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(1), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 7.2. G.S. 58-51-80(c) reads as rewritten:

"(c) The term "employees" as used in this section shall be deemed to include, for the purposes of insurance hereunder, employees of a single employer, the officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. Employees shall be added to the group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term "employee" is defined as a nonseasonal person who works on a full-time basis, with a normal work week of 30 or more hours and who is otherwise eligible for coverage, but does not include a person who works on a part-time, temporary, or substitute basis. The term "employer" as used herein may be deemed to include the State of North Carolina, any county, municipality or corporation, or the proper officers, as such, of any unincorporated municipality or any department or subdivision of the State, county, such corporation, or municipality determined by conditions pertaining to the employment. When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

PART VIII. NEWBORN COVERAGE REINSTATEMENT

SECTION 8. G.S. 58-51-30(b) reads as rewritten:

"(b) Every health benefit plan, as defined in ~~G.S. 58-3-167,~~ G.S. 58-51-115(a)(1), that provides benefits for any sickness, illness, or disability of any minor child or that provides benefits for any medical treatment or service furnished by a health care provider or institution to any minor child shall provide the benefits for those occurrences beginning with the moment of the child's birth if the birth occurs while the plan is in force. Every health benefit plan shall extend coverage to a newborn child without requirements for prior notification unless an additional premium charge to add the dependent is due. If an additional premium charge is due to cover the dependent, the health benefit plan shall cover the newborn child from the moment of birth if the newborn is enrolled within 30 days after the date of birth. Foster children and adopted children shall be treated the same as newborn infants and eligible for coverage on the same basis upon placement in the foster home or placement for adoption. Every health benefit plan shall extend coverage to a foster child or adopted child without

requirements for prior notification unless an additional premium charge to add the foster child or adopted child is due. If an additional premium charge is due to cover the foster child or adopted child, the health benefit plan shall cover the foster child or adopted child upon placement in the foster home or placement for adoption if the foster child or adopted child is enrolled within 30 days after the placement in the foster home or placement for adoption."

PART IX. LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES TECHNICAL CORRECTIONS

SECTION 9. G.S. 58-51-15(a)(2)b. reads as rewritten:

"b. This policy contains a provision limiting coverage for preexisting conditions. Preexisting conditions are covered under this policy _____ (insert number of months or days, not to exceed one year) after the effective date of coverage. Preexisting conditions mean "those conditions for which medical advice, diagnosis, care, or treatment was received or recommended within the one-year period immediately preceding the effective date of the person's coverage." ~~Credit~~ Except for the excepted benefits described in G.S. 58-68-25(b), credit for having satisfied some or all of the preexisting condition waiting periods under previous health benefits coverage shall be given in accordance with G.S. 58-68-30."

SECTION 9.1. G.S. 58-51-15(h) reads as rewritten:

"(h) Preexisting Condition Exclusion Clarification. – Sub-subdivision (a)(2)b. of this section does not apply ~~to:~~ to

~~(1)~~ ~~Policies~~ policies issued to eligible individuals under G.S. 58-68-60.

~~(2) Excepted benefits as described in G.S. 58-68-25(b).~~"

PART X. SMALL EMPLOYER HEALTH REINSURANCE POOL BOARD AMENDMENTS

SECTION 10. G.S. 58-50-150(b) reads as rewritten:

"(b) ~~Within 30 days after January 1, 1992, the Commissioner shall give notice to all carriers of the time and place for the initial organizational meeting, which shall take place within 90 days after the notice from the Commissioner.~~ The members shall select the initial Board, subject to the Commissioner's approval. The Board shall consist of ~~nine~~ six members. There shall be no more than two members of the Board representing any one carrier. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. ~~The voting rights to determine initial Board membership shall be weighted based upon net group health benefit plan premium derived from this State in the previous calendar year. Thereafter, voting~~ Voting rights shall be based on net group health benefit plan premium derived from small employer business. The Board shall at all times, to the extent possible, include at least one domestic insurance company licensed to transact accident and health insurance, one HMO, one nonprofit hospital or medical service plan. ~~Six~~ Five of the

members of the Board shall be small employer carriers. In approving selection of the Board, the Commissioner shall assure that all members are fairly represented."

PART XI. EQUITABLE ENROLLMENT PERIOD FOR SUPPLEMENTAL MEDICARE PLANS

SECTION 11. G.S. 58-54-45(a) reads as rewritten:

"(a) In addition to any rule adopted under this Article that is directly or indirectly related to open enrollment, an insurer shall at least make standardized Medicare Supplement Plans A, C, and J available to persons eligible for Medicare by reason of disability before age 65. This action shall be taken without regard to medical condition, claims experience, or health status. To be eligible, a person must submit an application during the six-month period beginning with the first month the person first enrolls in Medicare Part B. For those persons that are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision."

PART XII. REVOCATION AND SUSPENSION TECHNICAL CORRECTION

SECTION 12. G.S. 58-3-100(c) reads as rewritten:

"(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgement of the claim shall be one of the following:

(1) A statement made to the claimant or to the claimant's legal representative advising that the claim is being investigated.
(2) Payment of the claim.
(3) A bona fide written offer of settlement.
(4) A written denial of the claim.

A claimant includes an insured, a beneficiary of life or annuity contract, a health care provider, or a health care facility that is responsible for directly making the claim with an insurer, HMO, service corporation, or MEWA. With respect to a claim under an accident, health, or disability policy, if the acknowledgement sent to the claimant indicates that the claim remains under investigation, within 45 days after receipt by the insurer of the initial claim, the insurer shall send a claim status report to the insured and every 45 days thereafter until the claim is paid or denied. The report shall give details sufficient for the insured to understand why processing of the claim has not been completed and whether the insurer needs additional information to process the claim. If the claim acknowledgement includes information about why processing of the claim has not been completed and indicates whether additional information is needed, it may satisfy the requirement for the initial claim status report. This subsection does not apply to HMOs, service corporations, MEWAs or insurers subject to G.S. 58-3-225."

PART XIII. HEALTH BENEFIT PLAN TRAVEL EXPENSES COVERAGE

SECTION 13. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-270. Insurance coverage for travel expenses associated with obtaining care.**

(a) As used in this section, the terms "health benefit plan" and "insurer" have the meaning as found in G.S. 58-3-167.

(b) Each health benefit plan shall provide coverage for reasonable transportation, lodging, and boarding expenses incurred by a covered person to access covered health care services when the insurer, through its referral or network contracting arrangements, requires the covered person to travel more than 250 miles from the covered person's residence to obtain those covered health care services from a network provider.

(c) The coverage specified by this section is limited to transportation, lodging and boarding expenses incurred by a covered person when required by the health plan to travel to access covered health care services as provided in subsection (b) of this section when those health care services are not also available from a network provider who is located within 250 miles of the covered person's residence.

(d) The coverage required by this section shall be subject to plan requirements including any overall health care benefit plan aggregate limitations and shall last for the duration of the health care benefit plan's coverage of the treatment subject to this section. An insurer may utilize a per diem limit for the expenses specified in subsection (c) of this section as long as the limit reflects the high-low per diem method as annually published by the Internal Revenue Service or the Domestic Per Diem Rate as published annually by the federal General Services Administration in the area where the health care services are being obtained. All travel, lodging, and boarding expenses in excess of the insurer's per diem or the health benefit plan's aggregate limits shall be the responsibility of the covered person.

(e) An insurer may require prior approval of all expenses subject to this section.

(f) The coverage required by this section shall apply only to those travel, lodging, and boarding expenses incurred by the covered person accessing covered health care services in accordance with this section. If the covered person accessing covered health care services in accordance with this section is a minor, the health benefit plan shall also cover the expenses specified in subsection (c) of this section for a parent or guardian who accompanies the minor."

PART XIV. CREDIT INSURANCE AMENDMENTS

SECTION 14. G.S. 58-57-5 is amended by adding a new subdivision to read:

"(5a) "Critical period coverage" means insurance coverage for which benefits are limited to a stated number of payments or the payments end with the expiration of the policy, whichever is less."

SECTION 14.1. G.S. 58-57-50(b) reads as rewritten:

"(b) The refund of premiums for decreasing term credit life insurance shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy. The refund of premiums for ~~decreasing term credit life insurance~~

~~in transactions of 60 months duration or less and the refund of premiums for~~ single interest credit property insurance and single interest physical damage insurance shall be equal to the amount computed by the sum of digits formula known as the "Rule of 78." ~~The refund of premiums for decreasing term credit life insurance in transactions of more than 60 months duration shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy.~~ The refund of premiums for level term credit life insurance and dual interest credit property insurance and dual interest physical damage insurance shall be equal to the pro rata unearned gross premiums."

SECTION 14.2. G.S. 58-57-55 reads as rewritten:

"**§ 58-57-55. Issuance of policies.**

All policies of credit life insurance and credit accident and health insurance shall be issued only by an insurer authorized to do business in this State and shall be issued only through holders of licenses or authorizations issued by the Commissioner. ~~All~~ With the exception of credit insurance issued in accordance with G.S. 58-57-105, all policies of credit life insurance and credit accident and health insurance shall be delivered or issued for delivery in this ~~State only by an insurer authorized to do an insurance business therein, and shall be issued only through holders of licenses or authorizations issued by the Commissioner.~~ State. The enrollment of debtors under a group policy issued to a creditor and authorized under this Article shall not constitute the issuance of a policy of insurance."

SECTION 14.3. G.S. 58-57-60 is amended by adding a new subsection to read:

"(d) A claim acknowledgement shall be sent to the claimant within 30 days after receiving written or electronic notice of the claim. Acknowledgement shall include the following:

(1) A statement made to the insured or the claimant advising that the claim is being investigated.

(2) Payment of the claim.

(3) A bona fide written offer of settlement.

(4) A written denial of the claim."

SECTION 14.4. G.S. 58-57-110 reads as rewritten:

"**§ 58-57-110. Credit unemployment insurance rate standards; policy provisions.**

(a) Each year the Commissioner shall prescribe a minimum incurred loss ratio standard requirement to develop a premium rate reasonable in relation to the benefits provided by credit unemployment insurance coverage. The following requirements must be met:

(1) Coverage is provided or offered, with or without underwriting, to all debtors regardless of age who are working for salary, wages, or other employment income for at least 30 hours per week and have done so for 12 consecutive months;

(2) Coverage sets forth a definition of involuntary unemployment as a loss of employment income that may include, but is not limited to, loss caused by layoff, general strike, termination of employment, or lockout;

(3) Coverage does not contain any exclusion except: debts with irregular monthly payments; voluntary forfeiture of salary, wages, or other employment income; resignation; retirement; sickness, disease, or normal pregnancy; or loss of income due to termination as a result of willful misconduct that is a violation of some established, definite rule of conduct, a forbidden act, or willful dereliction of duty, or criminal ~~misconduct.~~misconduct;

(4) As long as there is no required time period limitation for registration, the insured may be required to register with the State unemployment office in order to qualify for benefit payments under the credit unemployment coverage. Qualification for State unemployment benefits shall not be required in order to qualify for benefit payments under the credit unemployment coverage.

(b) The Commissioner may approve other policy provisions and coverages consistent with the purposes of unemployment coverage.

(c) Joint coverage rates for credit unemployment insurance shall be one and two-thirds (1 2/3) times the approved single rate of coverage.

(d) The refund provision for credit unemployment insurance shall be equal to the pro rata unearned gross premium."

PART XV. MEDICARE SUPPLEMENTAL INSURANCE POLICY CHANGES

SECTION 15. G.S. 58-54-25(f) reads as rewritten:

"(f) No insurer shall use attained age as a structure or methodology for its Medicare supplement insurance rates. ~~rates unless the structure or methodology is fully disclosed to the applicant at the time of application or to the insured at the time of delivery if the purchase is by mail order. All types of solicitation materials shall clearly indicate that the premiums are based on attained age, which means that those premiums will increase each year. The Commissioner shall prescribe by rule the format and content of the attained age rating disclosure notice. The notice shall include:~~

~~(1) A statement that attained age rating means that rates increase as the insured ages or by the age group in which the insured is.~~

~~(2) An illustration based on actual attained age that states the dollar amount of premium increase for the insured over a period of not less than 10 policy years and that displays the life expectancy of the insured at the beginning of the period.~~

~~(3) A statement that premiums for other Medicare supplement policies that are on issue age bases do not increase as the insured ages.~~

~~(4) A statement that other Medicare supplement policies that are on issue age bases should be compared to policies on attained age bases.~~"

SECTION 15.1 G.S. 58-54-10 reads as rewritten:

"**§ 58-54-10. Standards for policy provisions.**

(a) No policy in force in this State shall contain benefits that duplicate benefits provided by Medicare.

(b) The Commissioner shall adopt rules to establish specific standards for provisions of policies. Such standards shall be in addition to and in accordance with applicable State law. No requirement of State law relating to minimum required policy benefits, other than the minimum standards contained in this Article, applies to policies. The standards may include without limitation to: terms of renewability; initial and subsequent conditions of eligibility; nonduplication of coverage; probationary periods; benefit limitations, exceptions, and reductions; elimination periods; requirements for replacement; recurrent conditions; and definitions of terms.

(c) The Commissioner may adopt rules that specify prohibited policy provisions not otherwise specifically authorized by State law that, in the opinion of the Commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a policy.

(d) Notwithstanding any other provision of State law, a policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. A policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(e) Repealed by Session Laws 1991 (Regular Session, 1992), c. 815, s. 3.

(f) An insurer shall use issue age as a structure or methodology for its Medicare supplement insurance rates. An insurer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the Commissioner.

(g) Except as otherwise provided in this subsection, an insurer shall not file for approval with the Commissioner more than one policy or certificate of each type for each standard policy. An insurer may offer, with the approval of the Commissioner, up to four additional policies or certificates of the same type for the same standard policy, one for each of the following:

(1) The inclusion of new or innovative benefits.

(2) The addition of either direct response or agent marketing methods.

(3) The addition of either guaranteed issue or underwritten coverage.

(4) The offering of coverage to individuals eligible for Medicare by reason of disability.

As used in this section, "type" means an individual policy, a group policy, an individual Medicare select policy, or a group Medicare select policy.

(h) Except as otherwise provided in this subsection, an insurer shall continue to make available for purchase any policy or certificate issued on and after January 1, 2004 that has been approved by the Commissioner. A policy or certificate shall not be considered to be available for purchase unless the insurer has actively offered the policy or certificate for sale in the immediately preceding 12 month period.

(i) An insurer may discontinue the availability of a policy or certificate if the insurer provides to the Commissioner in writing its decision to discontinue at least 30 days prior to the effective date of the discontinuance. Upon providing notice to the Commissioner, the insurer shall no longer offer for sale the policy or certificate in this State. An insurer that discontinues the availability of a policy or certificate pursuant to

this subsection shall not file for approval a new policy or certificate of the same type for the same standard Medicare supplement policy as the discontinued policy or certificate for a period of five years from the effective date of the discontinuance. The period of discontinuance may be reduced if the Commissioner determines that a shorter period is appropriate. The following shall be considered a discontinuance under this subsection:

(1) The sale or transfer of the insurer's Medicare supplement business to another insurer.

(2) A change in the rating structure or methodology of the policy or certificate unless:

a. The insurer provides actuarial memorandum, in a form and manner prescribed by the Commissioner, describing the manner in which the revised rating structure or methodology and resultant rates differ from the existing rating structure or methodology and rates, and

b. The insurer does not subsequently put into effect a change of rates or rating factors that would cause a change in the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum. The Commissioner may approve a change to the differential if the Commissioner finds the change to be in the public interest."

PART XVI. EFFECT OF HEADINGS, SEVERABILITY, AND EFFECTIVE DATES

SECTION 16. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SECTION 16.1. If any section or provision of this act is declared unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional, preempted, or otherwise invalid.

SECTION 16.2. Section 1 of this act becomes effective October 1, 2005. Sections 2 through 8 and Sections 9, 9.1, 13, 14, 14.1, 14.2, 14.3, 14.4, 15, and 15.1 of this act become effective January 1, 2004, and apply to policies or certificates issued or renewed on or after that date. The remainder of this act is effective when it becomes law and applies to policies or certificates issued or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 339

Committee Substitute Favorable 4/24/03

Committee Substitute #2 Favorable 4/30/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H339-PCS30362-RG-22

Short Title: Life and Health Insurance Omnibus.-AB (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO CONFORM NORTH CAROLINA'S THIRD PARTY ADMINISTRATOR ARTICLE TO REVISIONS TO THE NAIC MODEL THIRD PARTY ADMINISTRATOR STATUTE; REQUIRE GROUP ANNUITY INSURERS TO ISSUE INDIVIDUAL CERTIFICATES OF COVERAGE TO EACH ANNUITANT; REORGANIZE ARTICLE 60 OF CHAPTER 58 OF THE GENERAL STATUTES AND AMEND CURRENT DISCLOSURE REQUIREMENTS FOR SOLICITATION OF LIFE INSURANCE PRODUCTS AND ANNUITIES; REQUIRE INSURERS TO NOTIFY EMPLOYEES OF THE EXISTENCE OF EMPLOYER-OWNED LIFE INSURANCE POLICIES WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF COVERAGE; REQUIRE THAT ASSOCIATION PREMIUM RATES FOR ACCIDENT AND HEALTH INSURANCE BE ACTUARIALLY SOUND AND THAT ASSOCIATIONS BE RATED AS A SINGLE GROUP WHEN THE COVERAGE PROVIDED IS NOT EMPLOYER-BASED; LIMIT AN INDIVIDUAL ACCIDENT AND HEALTH INSURER'S USE OF AN INDIVIDUAL'S OWN CLAIMS' EXPERIENCE TO DEVELOP THE INDIVIDUAL'S RENEWAL RATE; EXEMPT A SOLE PROPRIETOR FROM THE FULL-TIME BASIS OR THIRTY-HOUR WORKWEEK REQUIREMENTS TO BE ELIGIBLE FOR LARGE GROUP HEALTH COVERAGE LIKE THE PROPRIETOR'S FULL-TIME EMPLOYEES; CORRECT AN INADVERTENT CROSS-REFERENCE IN ORDER TO REAPPLY NEWBORN COVERAGE TO A MORE COMPREHENSIVE GROUP OF INSURERS; TECHNICALLY CORRECT AN OMISSION REGARDING PROVISIONS GOVERNING PREEXISTING CONDITIONS FOR LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES; DECREASE THE TOTAL NUMBER OF MEMBERS THAT SERVE ON THE

SMALL EMPLOYER REINSURANCE POOL BOARD FROM NINE TO SIX; ALLOW PERSONS RETROACTIVELY ENROLLED IN MEDICARE PART B THE SAME SIX-MONTH OPEN ENROLLMENT PERIOD FOR MEDICARE SUPPLEMENT PLANS AS PERSONS WHO ENROLLED IN MEDICARE PART B WITHOUT A RETROACTIVE EFFECTIVE DATE OF COVERAGE; TECHNICALLY CORRECT THE REVOCATION AND SUSPENSION LAW TO INCLUDE A BENEFICIARY OF A LIFE OR ANNUITY CONTRACT AS A CLAIMANT; MANDATE HEALTH BENEFIT COVERAGE FOR DESIGNATED TRAVEL EXPENSES WHEN THE REQUIRED DISTANCE TRAVELED THRESHOLD IS MET; TO REQUIRE RATE METHODOLOGY UNDER MEDICARE SUPPLEMENTAL INSURANCE POLICIES TO BE BASED ON ISSUE AGE AND TO MAKE OTHER CHANGES TO THE LAW PERTAINING TO MEDICARE SUPPLEMENTAL INSURANCE POLICIES; AND MAKE TECHNICAL CORRECTIONS TO THE CREDIT INSURANCE LAWS.

The General Assembly of North Carolina enacts:

PART I. THIRD PARTY ADMINISTRATOR ACT REWRITE

SECTION 1. G.S. 58-56-2 is repealed.

SECTION 1.1. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-3. Definitions.**

As used in this Article:

(1) "Administrator", "third party administrator", and "TPA" mean a person who directly or indirectly underwrites, collects, or charges premiums from, or adjusts or settles claims on, residents of this State in connection with life, annuity, or health coverage offered or provided by an insurer, except any of the following:

a. An employer, or a wholly owned direct or indirect subsidiary of an employer, on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer.

b. A union on behalf of its members.

c. An insurer that is authorized to transact insurance in this State pursuant to Articles 1 through 67 of this Chapter.

d. An insurance producer licensed to sell life, annuity, or health coverage in this State, whose activities are limited exclusively to the sale of insurance.

e. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.

f. A trust and its trustees, agents, and employees acting pursuant to a trust established in conformity with 29 U.S.C. § 186.

g. A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees and employees acting pursuant to the trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account which

meets the requirements of section 401(f) of the Internal Revenue Code.

h. A credit union or a financial institution that is subject to supervision or examination by federal or State banking authorities, or a mortgage lender, to the extent it collects and remits premiums to licensed insurance producers or to limited lines producers or authorized insurers in connection with loan payments.

i. A credit card issuing company that advances for and collects insurance premiums or charges from its credit card holders who have authorized collection.

j. A person who adjusts or settles claims in the normal course of that person's practice or employment as a licensed attorney and who does not collect charges or premiums in connection with life, annuity, or health coverage.

k. An adjuster licensed by this State whose activities are limited to adjustment of claims.

l. A person licensed as a managing general agent in this State, whose activities are limited exclusively to the scope of activities conveyed under the license.

m. An administrator who is affiliated with an insurer and who only performs the contractual duties (between the administrator and the insurer) of an administrator for the direct and assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator's books and records to the Commissioner, upon a request from the Commissioner.

(2) "Affiliate or affiliated" means an entity or person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Commissioner" means the Commissioner of Insurance of this State.

(4) "Control" means the term as defined in G.S. 58-19-5(2).

(5) "GAAP" means United States generally accepted accounting principles consistently applied.

(6) "Home state" means the District of Columbia and any state or territory of the United States in which an administrator is incorporated or maintains its principal place of business. If neither the state in which the administrator is incorporated nor the state in which it maintains its principal place of business has adopted the NAIC Third Party Administrator Statute, or a substantially similar law governing administrators, the administrator may declare another state in which it conducts business to be its "home state".

(7) "Insurance producer" means a person who sells, solicits, or negotiates a contract of insurance as those terms are defined in this Article.

(8) "Insurer" means an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, and a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(9) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(10) "Nonresident administrator" means a person who is applying for licensure or is licensed in any state other than the administrator's home state.

(11) "Person" means an individual or a business entity.

(12) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(13) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(14) "Underwrites" or "underwriting" includes the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer or self-funded plan and also includes the overall planning and coordinating of a benefits program.

(15) "Uniform Application" means the current version of the NAIC Uniform Application for Third Party Administrators."

SECTION 1.2. G.S. 58-56-6 reads as rewritten:

"**§ 58-56-6. Written agreement necessary.**

(a) No TPA may act as a TPA without a written agreement between the TPA and the insurer. The written agreement shall be retained as part of the official records of both the insurer and the TPA for the duration of the agreement and for five years thereafter. The agreement shall contain all provisions required by this Article, ~~to the extent those requirements apply to the functions performed by the TPA.~~ except insofar as those requirements do not apply to the functions performed by the TPA.

(b) The agreement shall include a statement of duties that the TPA is expected to perform on behalf of the insurer and the ~~kinds of insurance the TPA is to be authorized to administer.~~lines, classes, or types of insurance for which the TPA is to be authorized to administer. The agreement shall provide for underwriting or other standards pertaining to the business underwritten by the insurer.

(c) The insurer or TPA may, with written notice, terminate the written agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the TPA during the pendency of any dispute regarding the cause for termination of the agreement. The insurer ~~must~~ shall fulfill any lawful obligations with

respect to policies affected by the agreement, regardless of any dispute between the insurer and the TPA."

SECTION 1.3. G.S. 58-56-16 reads as rewritten:

"**§ 58-56-16. Records to be kept.**

(a) Every TPA shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance record keeping and must be maintained for a period of at least five years after the date of their creation.

~~(b) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. The Commissioner shall keep confidential any trade secrets contained in those books and records, including the identity and addresses of policyholders and certificate holders, except that the Commissioner may use the information in any judicial or administrative proceeding instituted against the TPA.~~

(c) The insurer shall own the records generated by the TPA pertaining to the insurer, but the TPA shall retain the right to continuing access to books and records to permit the TPA to fulfill all of its contractual obligations to insured parties, claimants, and the insurer.

(d) In the event the insurer and the TPA cancel their agreement, notwithstanding the provisions of subsection (a) of this section, the TPA may, by written agreement with the insurer, transfer all records to a new TPA rather than retain them for five years. In this case, the new TPA shall acknowledge, in writing, that it is responsible for retaining the records of the prior TPA as required in subsection (a) of this section.

(e) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. Any documents, materials, or other information in the possession or control of the Commissioner that are furnished by a TPA, insurer, insurance producer, or an employee or agent thereof acting on behalf of the TPA, insurer, or insurance producer, or obtained by the Commissioner in an investigation shall be confidential by law and privileged, shall not constitute a public record as defined by G.S. 132-1, shall not be subject to subpoena, shall not be subject to discovery, and shall not be admissible in evidence in any private civil action. However, the Commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.

(f) Neither the Commissioner nor any person who receives documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (e) of this section.

(g) In order to assist in the performance of the Commissioner's duties, the Commissioner:

(1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (e) of this section, with other State, federal, and

international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, and with State, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(2) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(3) May enter into agreements governing sharing and use of information consistent with this subsection.

(h) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (g) of this section.

(i) Nothing in this Article shall prohibit the Commissioner from releasing final, adjudicated actions including for-cause terminations that are open to public inspection pursuant to Chapter 132 of the General Statutes or to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or its subsidiaries."

SECTION 1.4. G.S. 58-56-51 is repealed.

SECTION 1.5. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-52. Home state certificate of authority or license.**

(a) A person shall apply to be a TPA in its home state upon the Uniform Application and shall receive a certificate of authority or license from the Commissioner of its home state prior to performing any function of a TPA in this State. Each application shall be accompanied by a nonrefundable filing fee of one hundred dollars ($100.00).

(b) The Uniform Application shall include or be accompanied by the following information and documents:

(1) All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, and other applicable documents and all amendments to those documents.

(2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the applicant.

(3) NAIC Biographical Affidavit for the individuals who are responsible for the conduct of affairs of the applicant, including all members of the

board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company; any shareholders or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the applicant; and any other person who exercises control or influence over the affairs of the applicant.

(4) Audited annual financial statements or reports for the two most recent fiscal years that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two fiscal years, the Uniform Application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years and for any month during the current fiscal year for which the financial statements or reports have been completed. The applicant shall also include any other information the Commissioner requires in order to review the current financial condition of the applicant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include all of the following:

a. Amounts shown on the consolidated audited financial report shall be shown on the worksheet.

b. Amounts for each entity shall be stated separately.

c. Explanations of consolidating and eliminating entries.

(5) A statement describing the business plan including information on staffing levels and activities proposed in this State and nationwide. The plan shall provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping, and underwriting.

(6) Any other pertinent information required by the Commissioner.

(c) A TPA licensed or applying for licensure under this section shall make available for inspection by the Commissioner copies of all contracts with insurers or other persons utilizing the services of the TPA.

(d) A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

(e) The Commissioner may refuse to issue a certificate of authority or license if the Commissioner determines that the TPA, or any individual responsible for the conduct of affairs of the TPA, is not competent, trustworthy, financially responsible, or of good personal and business reputation, has had an insurance or an administrator certificate of authority or license denied or revoked for cause by any jurisdiction, or if

the Commissioner determines that any of the grounds set forth in G.S. 58-56-72 exists with respect to the TPA.

(f) A certificate of authority or license issued under this section shall remain valid, unless surrendered, suspended, or revoked by the Commissioner, for so long as the TPA continues in business in this State and remains in compliance with this Article.

(g) A TPA licensed or applying for licensure under this section shall immediately notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a certificate of authority or license in this State. The Commissioner shall report any such changes to the producer database maintained by the NAIC or affiliates or subsidiaries of the NAIC."

SECTION 1.6. G.S. 58-56-56 is repealed.

SECTION 1.7. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-57. Registration requirement.**

A person who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this State in connection with life, annuity, or health coverage provided by a self-funded plan shall register with the Commissioner annually, verifying its status as herein described in a format prescribed by the Commissioner."

SECTION 1.8. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-62. Annual report and filing.**

(a) Each TPA licensed under G.S. 58-56-52 shall file an annual report for the preceding calendar year with the Commissioner on or before July 1 of each year or within such extension of time as the Commissioner for good cause may grant. The annual report shall include an audited financial statement performed by an independent certified public accountant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the information required under G.S. 58-56-52(b)(4)a. through c. The report shall be in the form and contain such matters as the Commissioner prescribes and shall be verified by at least two officers of the TPA.

(b) The annual report shall include the complete names and addresses of all insurers with which the administrator had agreements during the preceding fiscal year.

(c) At the time of filing its annual report, the administrator shall pay a nonrefundable filing fee of one hundred dollars ($100.00).

(d) The Commissioner shall review the most recently filed annual report of each administrator on or before September 1 of each year. Upon completion of its review, the Commissioner shall either:

(1) Issue a certification to the administrator that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is currently licensed and in good standing, or noting any deficiencies found in the annual report and financial statements; or

(2) Update any electronic database maintained by the National Association of Insurance Commissioners, or its affiliates or subsidiaries, indicating that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is in compliance with existing law, or noting any deficiencies found in the annual report."

SECTION 1.9. G.S. 58-56-66 is repealed.

SECTION 1.10. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-67. Nonresident administrator certificate of authority.**

(a) Unless a TPA has obtained a home state certificate of authority or license in this State under G.S. 58-56-52, any TPA who performs administrator duties in this State shall obtain a nonresident administrator certificate of authority or license in accordance with this section by filing with the Commissioner the Uniform Application accompanied by a letter of certification from the home state of the TPA. In lieu of requiring a TPA to file a letter of certification with the Uniform Application, the Commissioner may verify the nonresident administrator's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries.

(b) A TPA shall not be eligible for a nonresident administrator certificate of authority or license under this section if it does not hold a certificate of authority as a resident in a home state that has adopted the NAIC Third Party Administrator Statute or a substantially similar law governing TPAs.

(c) Except as provided in subsections (b) and (h) of this section, the Commissioner shall issue to the TPA a nonresident administrator certificate of authority or license promptly upon receipt of a complete application.

(d) Unless notified by the Commissioner that the Commissioner is able to verify the nonresident TPA's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners, or its affiliates or subsidiaries, each nonresident TPA annually shall file a statement that its home state administrator certificate of authority or license remains in force and has not been revoked or suspended by its home state during the preceding year. The statement required by this subsection shall be filed by November 1 each year.

(e) At the time of filing the statement required under subsection (d) of this section or if the Commissioner has notified the nonresident administrator that the Commissioner is able to verify the nonresident administrator's home state certificate of authority or license status through an electronic database, the nonresident TPA shall pay, no later than November 1, a nonrefundable filing fee of one hundred dollars ($100.00).

(f) A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

(g) A nonresident TPA is not required to hold a nonresident administrator certificate of authority or license in this State if the TPA's duties in this State are limited to the administration of a group policy or plan of insurance and no more than a total of 100 persons insured for all plans reside in this State.

(h) The Commissioner may refuse to issue a nonresident administrator certificate of authority or license, or delay the issuance of a nonresident administrator certificate of authority or license, if the Commissioner determines that, due to events or information obtained subsequent to the home state's licensure of the TPA, the nonresident TPA cannot satisfy the requirements of this Article or that grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license. If the Commissioner refuses to issue a certificate of authority of license pursuant to this section, the Commissioner shall give written notice of its determination to the Commissioner of the home state, and the Commissioner may delay the issuance of a nonresident administrator certificate of authority to the nonresident TPA until the Commissioner determines that the administrator can satisfy the requirements of this Article and that no grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license."

SECTION 1.11. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-72. Grounds for denial, suspension, or revocation of certificate of authority.**

(a) The certificate of authority or license of a TPA shall be denied, suspended, or revoked if the Commissioner finds that the TPA:

(1) Is in an unsound financial condition;

(2) Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this State hazardous or injurious to insured persons or the public; or

(3) Has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final.

(b) The Commissioner may, after notice and opportunity for hearing, deny, suspend, or revoke the certificate of authority or license of a TPA if the Commissioner finds that the TPA:

(1) Has violated any lawful rule or order of the Commissioner or any provision of the insurance laws of this State;

(2) Has refused to be examined or to produce its accounts, records, and files for examination, or if any individual responsible for the conduct of affairs of the TPA has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination when required by the Commissioner, including:

a. Members of the board of directors, board of trustees, executive committee, or other governing board or committee;

b. The principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company;

c. Any shareholder or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the TPA; and

d. Any other person who exercises control or influence over the affairs of the TPA;

(3) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the TPA to secure full payment or settlement of such claims;

(4) Fails, at any time, to meet any qualification for which issuance of the certificate could have been refused had the failure then existed and been known to the Commissioner;

(5) Or any of the individuals responsible for the conduct of its affairs has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether adjudication was withheld, including:

a. Members of the board of directors, board of trustees, executive committee or other governing board or committee;

b. The principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company;

c. Any shareholder or member holding directly or indirectly ten percent or more of its voting stock, voting securities, or voting interest; and

d. Any other person who exercises control or influence over its affairs;

(6) Is under suspension or revocation in another state; or

(7) Has failed to timely file its annual report pursuant to G.S. 58-56-62 if a resident administrator or its statement and filing fee, as applicable, pursuant to G.S. 58-56-67(d) and (e) if a nonresident administrator.

(c) The Commissioner may, without advance notice or hearing, immediately suspend the certificate of authority or license of a TPA if the Commissioner finds that one or more of the following circumstances exist:

(1) The TPA is insolvent or impaired.

(2) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the TPA has been commenced in any state.

(3) The financial condition or business practices of the TPA otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this State.

(d) If the Commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of authority issued under this part, the Commissioner may, in lieu of suspension or revocation, impose a fine upon the TPA."

SECTION 1.12. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-73. Prohibited practices.**

No person shall act as, offer to act as, or hold himself or herself out as a TPA in this State without a valid domestic or nonresident administrator certificate of authority issued by the Commissioner."

PART II. GROUP ANNUITY CONTRACTS

SECTION 2. G.S. 58-58-145 reads as rewritten:

"**§ 58-58-145. Group annuity contracts defined; ~~requirements.~~requirements; issuance of individual certificates.**

(a) Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable to more than one person, is a group annuity contract. The person, firm or corporation to whom or to which such contract is issued, as herein provided, is the holder of the contract. The term "annuitant" means any person to whom or which payments are made under the group annuity contract. No authorized insurer shall deliver or issue for delivery in this State any group annuity contract except upon a group of annuitants that conforms to the following: under a contract issued to an employer, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, the stipulated payments on which shall be paid by the holder of such contract either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the employees covered by such contract, and providing a plan of retirement annuities under a plan which permits all of the employees of such employer or of any specified class or classes thereof to become annuitants. Any such group of employees may include retired employees, and may include officers and managers as employees, and may include the employees of subsidiary or affiliated corporations of a corporation employer, and may include the individual proprietors, partners and employees of affiliated individuals and firms controlled by the holders through stock ownership, contract or otherwise.

(b) The insurer of a group annuity contract shall issue to the policyholder, within 30 days of the effective date of the group annuity contract, an individual certificate for delivery to each annuitant which:

(1) Identifies the annuity to which the annuitant is entitled.

(2) States the name of the person to whom the annuity is payable.

(3) Discloses all of the rights and obligations of the insurer, the policyholder, the annuitant, and the persons to whom the annuity is payable with respect to the group annuity contract.

G.S. 58-3-150 applies to the form of the individual certificate required by this subsection.

(c) Each group annuity contract shall include a provision that the insurer will issue to the policyholder within 30 days of the effective date of the contract, for delivery to each annuitant, an individual certificate setting forth the information described in subsection (b) of this section."

PART III. DISCLOSURES FOR ANNUITIES AND LIFE INSURANCE

SECTION 3. The title of Article 60 of Chapter 58 of the General Statutes reads as rewritten:

"Article 60.

~~Regulation of Life Insurance Solicitation.~~

Standards of Disclosure for Annuities and Life Insurance."

SECTION 3.1. Article 60 of Chapter 58 of the General Statues is amended by designating G.S. 58-60-1 through G.S. 58-60-35 as:

"Part 1. Regulation of Life Insurance Solicitation."

SECTION 3.2. G.S. 58-60-1 reads as rewritten:

"**§ 58-60-1. ~~Purpose of Article.~~Short title; purpose.**

(a) This Part may be cited as the "Life Insurance Disclosure Act".

(b) The purpose of this ~~Article~~ Part is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for ~~their~~ the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and to improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

This ~~Article~~ Part does not prohibit an insurer ~~to use~~ from using additional material ~~which~~ that is not in violation of Articles 1 through 64 of this Chapter nor any other statute or regulation."

SECTION 3.3. G.S. 58-60-5 reads as rewritten:

"**§ 58-60-5. ~~Scope of Article;~~ Scope; exemptions.**

(a) Except as otherwise provided in this ~~Article,~~ Part, this ~~Article~~ Part applies to any solicitation, negotiation or procurement of life insurance occurring within this State. This ~~Article~~ Part applies to any issuer of a life insurance contract, including fraternal benefit societies.

(b) Unless otherwise specifically included, this ~~Article~~ Part does not apply to:

(1) ~~Annuities,~~Individual group annuity contracts.

(2) Credit life ~~insurance,~~insurance.

(3) Group life ~~insurance,~~ insurance (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy).

(4) Life insurance policies issued in connection with pension and welfare plans as defined by and that are subject to the federal Employee Retirement Income Security Act of 1974 ~~(ERISA),~~(ERISA).

(5) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(c) The policy summary in this ~~Article~~ Part is not required for policies that are sold subject to rules adopted by the Commissioner for life insurance illustrations."

SECTION 3.4. G.S. 58-60-10(7)k. reads as rewritten:

"k. The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in subparagraph e of this paragraph shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space. If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor, it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in this State."

SECTION 3.5. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Home Service Life Insurance Solicitation.

"**§ 58-60-40. Title and reference.**

This Part may be cited as the "Home Service Disclosure Act".

"**§ 58-60-45. Purpose.**

The purpose of this Part is to establish standards that ensure that meaningful information is provided to the purchasers of insurance policies distributed through the home service distribution system.

"**§ 58-60-50. Definitions.**

As used in this Part:

(1) "Home service distribution system" means a system in which insurance products are marketed, sold, or serviced by agents in person in the home or business of the insured, owner, or premium payor in assigned territories and may be identified as "debits". The policies are issued on a monthly or more frequent premium payment basis and agents are charged with the responsibilities of servicing the debit, which may include the collection of premium payments in the home or designated location on a monthly or more frequent basis, along with other services normally rendered.

(2) "Small face amount life insurance policy" means an insurance policy or certificate with a face amount of fifteen thousand dollars ($15,000) or less.

"**§ 58-60-55. General disclosure requirements.**

(a) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80 and at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) Whether the policyholder is allowed to change the method of premium payment and any conditions for that change;

(2) Whether or not at a subsequent date a policyholder may combine multiple policies from the same insurance company, its affiliates, and its subsidiaries into one policy in order to provide like or enhanced coverage at a comparable or reduced premium to eliminate duplicate administrative costs associated with each policy and, if the option is available:

a. Whether a policyholder will be subject to underwriting when combining multiple policies into one policy; and

b. Whether a policyholder will be subject to a new contestable period, waiting periods, etc., when combining multiple policies into one policy.

(b) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80, an insurer issuing a small face amount life insurance policy through the home service distribution system shall provide the current disclosure included in Appendix A of the NAIC's Home Service Disclosure Model if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

If, for a particular policy form, the cumulative premiums may exceed the face for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefit attributable to the riders.

If an illustration has been provided that satisfies the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code, the disclosure requirements of subsection (b) of this section are deemed to have been met.

"**§ 58-60-60. Disclosure of payment methods.**

In accordance with the disclosure simplification standards set forth in G.S. 58-60-80, at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) What premium savings may be realized by a different method or less frequent mode of premium payment.

(2) That premiums are still due and payable by the person responsible for premium payments even when an agent does not collect the premiums.

(3) The mailing address for payment of premiums to the company.

(4) That the consumer is entitled to receive a receipt for premium payments when premium payments are made in cash or in person.

"**§ 58-60-65. Evidence of payment.**

For every premium collected on a policy of life or disability insurance marketed, sold, or serviced through the home service distribution system in this State, the agent, solicitor, or broker, or any employee acting on the agent, solicitor, or broker's behalf, collecting or receiving the premium in person shall:

(1) Maintain and furnish to the policyholder a receipt indicating payment of premiums, which shall provide the payor with clearly understandable, written evidence of payment at the time the premium is collected. At a minimum it shall clearly show:

a. The name of the payor.

b. The name of insured under each policy covered by the premium.

c. The amount paid.

d. The date paid.

e. The date paid-to-status of the policy.

f. The policy number.

g. The face amount and type of policy for which the payment will be credited.

h. The signature of the agent.

i. The agent's printed name and unique identification number.

j. The name, complete address, and phone number of the insurer.

(2) Remit to the insurer's home office or applicable district office, or deposit in a fiduciary account, the premium collected on behalf of the policyholder within 10 days of receipt from the premium payor or policy owner. In the event that the insurer utilizes an accounting system based on a monthly list bill, all premiums collected shall be credited from the date of collection. The premium shall be fully applied to that particular account.

"**§ 58-60-70. Proof of policy delivery.**

If an insurance policy marketed, sold, or serviced through the home service distribution system is delivered by an agent, solicitor, or broker, or an employee acting on the agent, solicitor, or broker's behalf, a receipt shall be signed by the purchaser and the agent acknowledging delivery to the purchaser of the policy or contract and the disclosures required by this Part. The receipt shall contain the name of the purchaser, the policy or contract number, the amount of the initial premium payment, and the date the delivery was completed. A policy shall be deemed to have been received six months after the date of issuance if the insured has paid premiums pursuant to the contract. All delivery receipts required by this section shall be retained by the company for not less than three years following delivery and shall be available for inspection upon request of the Commissioner.

"**§ 58-60-75. Company duties.**

Each insurer engaged in the home service distribution system in this State shall make available to the Commissioner for review:

(1) Established written procedures to audit agencies engaged in the home service system of distribution of policies in this State; and

(2) Proof of audits conducted periodically that reasonably ensure that the premium payor's records accurately reflect the premium due date and premium paid-to-status of the policy or policies purchased.

"**§ 58-60-80. Minimum disclosure language standards.**

All disclosure forms shall comply with the readability standards in Article 38 of this Chapter. It is presumed the disclosure form in Appendix A of the NAIC's Home Service Disclosure Model Act complies with this Part."

SECTION 3.6. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Small Face Amount Life Insurance Solicitation.

"**§ 58-60-85. Title and reference.**

This Part may be cited as the "Small Face Amount Life Insurance Disclosure Act".

"**§ 58-60-90. Purpose; intent; and scope.**

(a) The purpose of this Part is to establish standards that ensure meaningful information is provided to the purchasers of small face amount policies.

(b) This Part applies to any life insurance policy or certificate with an initial face amount of fifteen thousand dollars ($15,000) or less.

(c) This Part does not apply to:

(1) Variable life insurance.

(2) Individual and group annuity contracts.

(3) Credit life insurance.

(4) Group or individual policies of life insurance issued to members of an employer group or other permitted group where:

a. Every plan of coverage was selected by the employer or other group representative;

b. Some portion of the premium is paid by the group or through payroll deduction; and

c. Group underwriting or simplified underwriting is used.

(5) Policies and certificates where an illustration has been provided pursuant to the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code.

"**§ 58-60-95. Disclosure requirements.**

(a) An insurer issuing a small face amount policy shall provide the current disclosure included in Appendix A of the NAIC Disclosure for Small Face Amount Life Insurance Policies Model Act if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

(b) If, for a particular policy form, the cumulative premiums may exceed the face amount for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

(c) Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefits attributable to the riders.

"**§ 58-60-100. Insurer duties.**

The insurer and its producers shall have a duty to provide information to policyholders or certificate holders that ask questions about the disclosure statement."

SECTION 3.7. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 4. Regulation of Annuity Solicitation.

"**§ 58-60-105. Title and reference.**

This Part may be cited as the "Annuity Disclosure Act".

"**§ 58-60-110. Purpose; intent; scope.**

(a) The purpose of this Part is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. This Part specifies the minimum information that must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this Part is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

(b) This Part applies to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products.

(2) Immediate and deferred annuities that contain no nonguaranteed elements.

(3) Annuities used to fund:

a. An employee pension plan, which is covered by the Employee Retirement Income Security Act (ERISA);

b. A plan described by section 401(a), 401(k), or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

c. A governmental or church plan defined in section 414, or a deferred compensation plan of a state or local government or a tax exempt organization under section 457, of the Internal Revenue Code;

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

e. Structured settlement annuities;

f. Charitable gift annuities; or

g. Funding agreements.

(c) This Part shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement.

"**§ 58-60-115. Definitions.**

As used in this Part:

(1) "Annuity buyer's guide" or "buyer's guide" means the current NAIC Model Buyer's Guide to Fixed Deferred Annuities, including any appendix thereto.

(2) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only or from both determinable and guaranteed elements.

(5) "Disclosure document" means the document the contents of which are described in G.S. 58-60-125.

(6) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(7) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity".

(8) "Guaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(9) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(10) "Structured settlement annuity" means a "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

"**§ 58-60-120. Standards for the disclosure document and buyer's guide.**

(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant, at or before the time of application, shall be given both the disclosure document described in G.S. 58-60-125 and a copy of the buyer's guide.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the buyer's guide no later than five business days after the completed application is received by the insurer.

(1) With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a buyer's guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(2) With respect to an application received via the Internet:

a. Taking reasonable steps to make the buyer's guide available for viewing and printing on the insurer's web site shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's web site shall be deemed to satisfy the requirement that the disclosure

document be provided no later than five business days after receipt of the application.

(3) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the Department for a free annuity buyer's guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity buyer's guide.

(c) Where the buyer's guide and disclosure document are not provided at or before the time of application, a free look period of no less than 15 days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under State law or regulation.

"**§ 58-60-125. Contents of disclosure document.**

At a minimum, all of the following information shall be included in the disclosure document required under this Part:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity.

(2) The insurer's name and address.

(3) A description of the contract and its benefits, emphasizing its long-term nature, including the following, if appropriate:

a. The guaranteed, nonguaranteed, and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate.

b. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed.

c. Periodic income options both on a guaranteed and nonguaranteed basis.

d. Any value reductions caused by withdrawals from or surrender of the contract.

e. How values in the contract can be accessed.

f. The death benefit, if available, and how it will be calculated.

g. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract.

h. The impact of any rider, such as a long-term care rider.

(4) The specific dollar amount or percentage charges and fees with an explanation of how they apply.

(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

"**§ 58-60-130. Report to contract owners.**

For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least all of the following information:

(1) The beginning and end date of the current report period.

(2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period.

(3) The total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period.

(4) The amount of outstanding loans, if any, as of the end of the current report period."

PART IV. EMPLOYER-OWNED LIFE INSURANCE DISCLOSURE

SECTION 4. G.S. 58-58-75 reads as rewritten:

"**§ 58-58-75. Insurable interest in life and physical ability of employee or agent.**

(a) An employer, whether a partnership, joint venture, business trust, mutual association, corporation, any other form of business organization, or one or more individuals, or any religious, educational, or charitable corporation, institution or body, has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an employee for the benefit of such employer. Any principal shall have a life insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an agent for the benefit of such principal.

(b) An employee described in subsection (a) of this section shall be insured for the benefit of an employer described in subsection (a) of this section only if the employee receives written notification from the insurer of the existence of the coverage. The notice shall be provided to the employee within 30 days after the effective date of the coverage and shall include a statement that the employer may maintain the life insurance coverage on the employee even after employment is terminated.

(c) For nonkey or nonmanagerial employees, the aggregate amount of coverage shall be reasonably related to the benefits provided to the employees in the aggregate.

(d) With respect to employer-provided pension and welfare plans, the life insurance coverage purchased to finance the plans may only cover the lives of those employees and retirees who, at the time their lives were first insured under the plan, either are participants, or would be eligible to participate, upon the satisfaction of age, service, or similar eligibility criteria in the plan."

PART V. ACTUARIALLY SOUND ASSOCIATION GROUP ACCIDENT AND HEALTH PREMIUM RATES

SECTION 5. G.S. 58-51-80(1a) reads as rewritten:

"(1a) Under a policy issued to an association or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of 500 persons and shall have been

organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least five years; and shall have a constitution and bylaws that provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members; (ii) except for credit unions, the association or associations collect dues or solicit contributions from members; and (iii) the members, other than associate members, have voting privileges and representation on the governing board and committees. The policy is subject to the following requirements:

a. The policy may insure members of the association or associations, employees of the association or associations, or employees of members, or one or more of the preceding or all of any class or classes for the benefit of persons other than the employee's employer.

b. The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members. The premium rates for each association policy shall be developed, and applied to the certificates thereunder, on an actuarially sound basis.

c. Repealed by Session Laws 1997-259, s. 8."

PART VI. INDIVIDUAL ACCIDENT AND HEALTH INSURANCE RENEWAL RATE LIMITATIONS

SECTION 6. G.S. 58-51-95 is amended by adding a new subsection to read:

"(g) For policies subject to this section, an individual health insurer shall not increase an individual's renewal premium for continued health insurance coverage under the terms of the individual's health insurance policy based on any health status-related factors in relation to the individual or a dependent of the individual, including:

(1) Health status.

(2) Medical condition (including both physical and mental illnesses).

(3) Claims experience.

(4) Receipt of health care.

(5) Medical history."

PART VII. LARGE GROUP HEALTH INSURANCE SOLE PROPRIETOR EXEMPTION

SECTION 7. G.S. 58-65-60 is amended by adding a new subsection to read:

"(e3) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 7.1. G.S. 58-67-85 is amended by adding a new subsection to read:

"(d1) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(1), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 7.2. G.S. 58-51-80(c) reads as rewritten:

"(c) The term "employees" as used in this section shall be deemed to include, for the purposes of insurance hereunder, employees of a single employer, the officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. Employees shall be added to the group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term "employee" is defined as a nonseasonal person who works on a full-time basis, with a normal work week of 30 or more hours and who is otherwise eligible for coverage, but does not include a person who works on a part-time, temporary, or substitute basis. The term "employer" as used herein may be deemed to include the State of North Carolina, any county, municipality or corporation, or the proper officers, as such, of any unincorporated municipality or any department or subdivision of the State, county, such corporation, or municipality determined by conditions pertaining to the employment. When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

PART VIII. NEWBORN COVERAGE REINSTATEMENT

SECTION 8. G.S. 58-51-30(b) reads as rewritten:

"(b) Every health benefit plan, as defined in ~~G.S. 58-3-167,~~ G.S. 58-51-115(a)(1), that provides benefits for any sickness, illness, or disability of any minor child or that provides benefits for any medical treatment or service furnished by a health care provider or institution to any minor child shall provide the benefits for those occurrences beginning with the moment of the child's birth if the birth occurs while the plan is in force. Every health benefit plan shall extend coverage to a newborn child without requirements for prior notification unless an additional premium charge to add the dependent is due. If an additional premium charge is due to cover the dependent, the health benefit plan shall cover the newborn child from the moment of birth if the newborn is enrolled within 30 days after the date of birth. Foster children and adopted children shall be treated the same as newborn infants and eligible for coverage on the same basis upon placement in the foster home or placement for adoption. Every health benefit plan shall extend coverage to a foster child or adopted child without

requirements for prior notification unless an additional premium charge to add the foster child or adopted child is due. If an additional premium charge is due to cover the foster child or adopted child, the health benefit plan shall cover the foster child or adopted child upon placement in the foster home or placement for adoption if the foster child or adopted child is enrolled within 30 days after the placement in the foster home or placement for adoption."

PART IX. LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES TECHNICAL CORRECTIONS

SECTION 9. G.S. 58-51-15(a)(2)b. reads as rewritten:

"b. This policy contains a provision limiting coverage for preexisting conditions. Preexisting conditions are covered under this policy _____ (insert number of months or days, not to exceed one year) after the effective date of coverage. Preexisting conditions mean "those conditions for which medical advice, diagnosis, care, or treatment was received or recommended within the one-year period immediately preceding the effective date of the person's coverage." ~~Credit~~ Except for the excepted benefits described in G.S. 58-68-25(b), credit for having satisfied some or all of the preexisting condition waiting periods under previous health benefits coverage shall be given in accordance with G.S. 58-68-30."

SECTION 9.1. G.S. 58-51-15(h) reads as rewritten:

"(h) Preexisting Condition Exclusion Clarification. – Sub-subdivision (a)(2)b. of this section does not apply ~~to:~~ to

~~(1)~~ ~~Policies~~ policies issued to eligible individuals under G.S. 58-68-60.

~~(2) Excepted benefits as described in G.S. 58-68-25(b).~~"

PART X. SMALL EMPLOYER HEALTH REINSURANCE POOL BOARD AMENDMENTS

SECTION 10. G.S. 58-50-150(b) reads as rewritten:

"(b) Within 30 days after January 1, 1992, the Commissioner shall give notice to all carriers of the time and place for the initial organizational meeting, which shall take place within 90 days after the notice from the Commissioner. The members shall select the initial Board, subject to the Commissioner's approval. The Board shall consist of nine six members. There shall be no more than two members of the Board representing any one carrier. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. The voting rights to determine initial Board membership shall be weighted based upon net group health benefit plan premium derived from this State in the previous calendar year. Thereafter, voting Voting rights shall be based on net group health benefit plan premium derived from small employer business. The Board shall at all times, to the extent possible, include at least one domestic insurance company licensed to transact accident and health insurance, one HMO, one nonprofit hospital or medical service plan. Six Five of the

members of the Board shall be small employer carriers. In approving selection of the Board, the Commissioner shall assure that all members are fairly represented."

PART XI. EQUITABLE ENROLLMENT PERIOD FOR SUPPLEMENTAL MEDICARE PLANS

SECTION 11. G.S. 58-54-45(a) reads as rewritten:

"(a) In addition to any rule adopted under this Article that is directly or indirectly related to open enrollment, an insurer shall at least make standardized Medicare Supplement Plans A, C, and J available to persons eligible for Medicare by reason of disability before age 65. This action shall be taken without regard to medical condition, claims experience, or health status. To be eligible, a person must submit an application during the six-month period beginning with the first month the person first enrolls in Medicare Part B. For those persons that are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision."

PART XII. REVOCATION AND SUSPENSION TECHNICAL CORRECTION

SECTION 12. G.S. 58-3-100(c) reads as rewritten:

"(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgement of the claim shall be one of the following:

(1) A statement made to the claimant or to the claimant's legal representative advising that the claim is being investigated.
(2) Payment of the claim.
(3) A bona fide written offer of settlement.
(4) A written denial of the claim.

A claimant includes an insured, a beneficiary of life or annuity contract, a health care provider, or a health care facility that is responsible for directly making the claim with an insurer, HMO, service corporation, or MEWA. With respect to a claim under an accident, health, or disability policy, if the acknowledgement sent to the claimant indicates that the claim remains under investigation, within 45 days after receipt by the insurer of the initial claim, the insurer shall send a claim status report to the insured and every 45 days thereafter until the claim is paid or denied. The report shall give details sufficient for the insured to understand why processing of the claim has not been completed and whether the insurer needs additional information to process the claim. If the claim acknowledgement includes information about why processing of the claim has not been completed and indicates whether additional information is needed, it may satisfy the requirement for the initial claim status report. This subsection does not apply to HMOs, service corporations, MEWAs or insurers subject to G.S. 58-3-225."

PART XIII. HEALTH BENEFIT PLAN TRAVEL EXPENSES COVERAGE

SECTION 13. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-270. Insurance coverage for travel expenses associated with obtaining care.**

(a) As used in this section, the terms "health benefit plan" and "insurer" have the meaning as found in G.S. 58-3-167.

(b) Each health benefit plan shall provide coverage for reasonable transportation, lodging, and boarding expenses incurred by a covered person to access covered health care services when the insurer, through its referral or network contracting arrangements, requires the covered person to travel more than 250 miles from the covered person's residence to obtain those covered health care services from a network provider.

(c) The coverage specified by this section is limited to transportation, lodging and boarding expenses incurred by a covered person when required by the health plan to travel to access covered health care services as provided in subsection (b) of this section when those health care services are not also available from a network provider who is located within 250 miles of the covered person's residence.

(d) The coverage required by this section shall be subject to plan requirements including any overall health care benefit plan aggregate limitations and shall last for the duration of the health care benefit plan's coverage of the treatment subject to this section. An insurer may utilize a per diem limit for the expenses specified in subsection (c) of this section as long as the limit reflects the high-low per diem method as annually published by the Internal Revenue Service or the Domestic Per Diem Rate as published annually by the federal General Services Administration in the area where the health care services are being obtained. All travel, lodging, and boarding expenses in excess of the insurer's per diem or the health benefit plan's aggregate limits shall be the responsibility of the covered person.

(e) An insurer may require prior approval of all expenses subject to this section.

(f) The coverage required by this section shall apply only to those travel, lodging, and boarding expenses incurred by the covered person accessing covered health care services in accordance with this section. If the covered person accessing covered health care services in accordance with this section is a minor, the health benefit plan shall also cover the expenses specified in subsection (c) of this section for a parent or guardian who accompanies the minor."

PART XIV. CREDIT INSURANCE AMENDMENTS

SECTION 14. G.S. 58-57-5 is amended by adding a new subdivision to read:

"(5a) "Critical period coverage" means insurance coverage for which benefits are limited to a stated number of payments or the payments end with the expiration of the policy, whichever is less."

SECTION 14.1. G.S. 58-57-50(b) reads as rewritten:

"(b) The refund of premiums for decreasing term credit life insurance shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy. The refund of premiums for ~~decreasing term credit life insurance~~

~~in transactions of 60 months duration or less and the refund of premiums for~~ single interest credit property insurance and single interest physical damage insurance shall be equal to the amount computed by the sum of digits formula known as the "Rule of 78." ~~The refund of premiums for decreasing term credit life insurance in transactions of more than 60 months duration shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy.~~ The refund of premiums for level term credit life insurance and dual interest credit property insurance and dual interest physical damage insurance shall be equal to the pro rata unearned gross premiums."

SECTION 14.2. G.S. 58-57-55 reads as rewritten:

"**§ 58-57-55. Issuance of policies.**

All policies of credit life insurance and credit accident and health insurance shall be issued only by an insurer authorized to do business in this State and shall be issued only through holders of licenses or authorizations issued by the Commissioner. ~~All~~ With the exception of credit insurance issued in accordance with G.S. 58-57-105, all policies of credit life insurance and credit accident and health insurance shall be delivered or issued for delivery in this ~~State only by an insurer authorized to do an insurance business therein, and shall be issued only through holders of licenses or authorizations issued by the Commissioner.~~ State. The enrollment of debtors under a group policy issued to a creditor and authorized under this Article shall not constitute the issuance of a policy of insurance."

SECTION 14.3. G.S. 58-57-60 is amended by adding a new subsection to read:

"(d) A claim acknowledgement shall be sent to the claimant within 30 days after receiving written or electronic notice of the claim. Acknowledgement shall include the following:

(1) A statement made to the insured or the claimant advising that the claim is being investigated.

(2) Payment of the claim.

(3) A bona fide written offer of settlement.

(4) A written denial of the claim."

SECTION 14.4. G.S. 58-57-110 reads as rewritten:

"**§ 58-57-110. Credit unemployment insurance rate standards; policy provisions.**

(a) Each year the Commissioner shall prescribe a minimum incurred loss ratio standard requirement to develop a premium rate reasonable in relation to the benefits provided by credit unemployment insurance coverage. The following requirements must be met:

(1) Coverage is provided or offered, with or without underwriting, to all debtors regardless of age who are working for salary, wages, or other employment income for at least 30 hours per week and have done so for 12 consecutive months;

(2) Coverage sets forth a definition of involuntary unemployment as a loss of employment income that may include, but is not limited to, loss caused by layoff, general strike, termination of employment, or lockout;

(3) Coverage does not contain any exclusion except: debts with irregular monthly payments; voluntary forfeiture of salary, wages, or other employment income; resignation; retirement; sickness, disease, or normal pregnancy; or loss of income due to termination as a result of willful misconduct that is a violation of some established, definite rule of conduct, a forbidden act, or willful dereliction of duty, or criminal ~~misconduct.~~misconduct;

(4) As long as there is no required time period limitation for registration, the insured may be required to register with the State unemployment office in order to qualify for benefit payments under the credit unemployment coverage. Qualification for State unemployment benefits shall not be required in order to qualify for benefit payments under the credit unemployment coverage.

(b) The Commissioner may approve other policy provisions and coverages consistent with the purposes of unemployment coverage.

(c) Joint coverage rates for credit unemployment insurance shall be one and two-thirds (1 2/3) times the approved single rate of coverage.

(d) The refund provision for credit unemployment insurance shall be equal to the pro rata unearned gross premium."

PART XV. MEDICARE SUPPLEMENTAL INSURANCE POLICY CHANGES

SECTION 15. G.S. 58-54-25(f) reads as rewritten:

"(f) No insurer shall use attained age as a structure or methodology for its Medicare supplement insurance rates. ~~rates unless the structure or methodology is fully disclosed to the applicant at the time of application or to the insured at the time of delivery if the purchase is by mail order. All types of solicitation materials shall clearly indicate that the premiums are based on attained age, which means that those premiums will increase each year. The Commissioner shall prescribe by rule the format and content of the attained age rating disclosure notice. The notice shall include:~~

~~(1) A statement that attained age rating means that rates increase as the insured ages or by the age group in which the insured is.~~

~~(2) An illustration based on actual attained age that states the dollar amount of premium increase for the insured over a period of not less than 10 policy years and that displays the life expectancy of the insured at the beginning of the period.~~

~~(3) A statement that premiums for other Medicare supplement policies that are on issue age bases do not increase as the insured ages.~~

~~(4) A statement that other Medicare supplement policies that are on issue age bases should be compared to policies on attained age bases.~~"

SECTION 15.1 G.S. 58-54-10 reads as rewritten:

"**§ 58-54-10. Standards for policy provisions.**

(a) No policy in force in this State shall contain benefits that duplicate benefits provided by Medicare.

(b) The Commissioner shall adopt rules to establish specific standards for provisions of policies. Such standards shall be in addition to and in accordance with applicable State law. No requirement of State law relating to minimum required policy benefits, other than the minimum standards contained in this Article, applies to policies. The standards may include without limitation to: terms of renewability; initial and subsequent conditions of eligibility; nonduplication of coverage; probationary periods; benefit limitations, exceptions, and reductions; elimination periods; requirements for replacement; recurrent conditions; and definitions of terms.

(c) The Commissioner may adopt rules that specify prohibited policy provisions not otherwise specifically authorized by State law that, in the opinion of the Commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a policy.

(d) Notwithstanding any other provision of State law, a policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. A policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(e) Repealed by Session Laws 1991 (Regular Session, 1992), c. 815, s. 3.

(f) An insurer shall use issue age as a structure or methodology for its Medicare supplement insurance rates. An insurer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the Commissioner.

(g) Except as otherwise provided in this subsection, an insurer shall not file for approval with the Commissioner more than one policy or certificate of each type for each standard policy. An insurer may offer, with the approval of the Commissioner, up to four additional policies or certificates of the same type for the same standard policy, one for each of the following:

(1) The inclusion of new or innovative benefits.

(2) The addition of either direct response or agent marketing methods.

(3) The addition of either guaranteed issue or underwritten coverage.

(4) The offering of coverage to individuals eligible for Medicare by reason of disability.

As used in this section, "type" means an individual policy, a group policy, an individual Medicare select policy, or a group Medicare select policy.

(h) Except as otherwise provided in this subsection, an insurer shall continue to make available for purchase any policy or certificate issued on and after January 1, 2004 that has been approved by the Commissioner. A policy or certificate shall not be considered to be available for purchase unless the insurer has actively offered the policy or certificate for sale in the immediately preceding 12 month period.

(i) An insurer may discontinue the availability of a policy or certificate if the insurer provides to the Commissioner in writing its decision to discontinue at least 30 days prior to the effective date of the discontinuance. Upon providing notice to the Commissioner, the insurer shall no longer offer for sale the policy or certificate in this State. An insurer that discontinues the availability of a policy or certificate pursuant to

this subsection shall not file for approval a new policy or certificate of the same type for the same standard Medicare supplement policy as the discontinued policy or certificate for a period of five years from the effective date of the discontinuance. The period of discontinuance may be reduced if the Commissioner determines that a shorter period is appropriate. The following shall be considered a discontinuance under this subsection:

(1) The sale or transfer of the insurer's Medicare supplement business to another insurer.

(2) A change in the rating structure or methodology of the policy or certificate unless:

a. The insurer provides actuarial memorandum, in a form and manner prescribed by the Commissioner, describing the manner in which the revised rating structure or methodology and resultant rates differ from the existing rating structure or methodology and rates, and

b. The insurer does not subsequently put into effect a change of rates or rating factors that would cause a change in the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum. The Commissioner may approve a change to the differential if the Commissioner finds the change to be in the public interest."

PART XVI. EFFECT OF HEADINGS, SEVERABILITY, AND EFFECTIVE DATES

SECTION 16. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SECTION 16.1. If any section or provision of this act is declared unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional, preempted, or otherwise invalid.

SECTION 16.2. Section 1 of this act becomes effective October 1, 2005. Sections 2 through 8 and Sections 9, 9.1, 13, 14, 14.1, 14.2, 14.3, 14.4, 15, and 15.1 of this act become effective January 1, 2004, and apply to policies or certificates issued or renewed on or after that date. The remainder of this act is effective when it becomes law and applies to policies or certificates issued or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 892
Committee Substitute Favorable 4/30/03

Short Title: Workers Comp./Interstate Carrier Drivers. (Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE COMMON LAW DETERMINES WHETHER A DRIVER OF A TRUCK, TRACTOR, OR TRUCK TRACTOR TRAILER OF AN INTERSTATE MOTOR CARRIER IS AN EMPLOYEE SUBJECT TO THE WORKERS' COMPENSATION ACT AND TO DEFINE THE OBLIGATIONS UNDER THE ACT FOR SUCH DRIVERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"**§ 97-19.1. Truck, tractor, or truck tractor trailer driver's status as employee or independent contractor.**

An individual in the interstate carrier industry who operates a truck, tractor, or truck tractor licensed by a governmental motor vehicle regulatory agency may be an employee or an independent contractor under this Article dependent upon the application of the common law test for determining employment status.

Any principal contractor, intermediate contractor, or subcontractor, irrespective of whether such contractor regularly employs three or more employees, who contracts with an individual in the interstate carrier industry who operates a truck, tractor, or truck tractor licensed by a governmental motor vehicle regulatory agency, who has not secured the payment of compensation in the manner provided for employers set forth in G.S. 97-93 for himself personally and for his employees and subcontractors, if any, shall be liable as an employer under this Article for the payment of compensation and other benefits on account of the injury or death of the independent contractor and his employees or subcontractors due to an accident arising out of and in the course of the performance of the work covered by such contract.

The principal contractor, intermediate contractor, or subcontractor may insure any and all of his independent contractors and their employees or subcontractors in a blanket policy and when insured the independent contractors, subcontractors, and employees will be entitled to compensation benefits under the blanket policy.

A principal contractor, intermediate contractor, or subcontractor may include in the governing contract with an independent contractor in the interstate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency an agreement for the independent contractor to reimburse the cost of covering that independent contractor under the principal contractors, intermediate contractor's, or subcontractor's coverage of his business."

SECTION 2. This act is effective when it becomes law and applies to any claim arising on or after October 1, 2003.

HOUSE BILL 892:
Workers Comp./Interstate Carrier Drivers

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Saunders
Date:	May 29, 2003	**Summary by:**	Kory J. Goldsmith Committee Counsel
Version:	Proposed Committee Substitute 892-CSRC-67[v.2]		

SUMMARY: ***House Bill 892 would amend Chapter 97 of the General Statutes (Workers Compensation) to make a person who hires an interstate or intrastate truck driver liable under the workers compensation statutes for the driver's injury or death arising out of and in the course of performance under the contract, regardless of whether the driver is deemed to be an employee or an independent contractor. The bill provides that the common law test of whether an interstate truck or tractor trailer driver is an independent contractor or an "employee" under the state's workers compensation laws applies for purposes of determining whether or not the contractor maybe reimbursed for the cost of workers compensation coverage by the driver.***

CURRENT LAW: Under current law, an employer of three or more employees must provide workers compensation coverage for injuries or death to the employees that arise out of and in the course of the performance of work performed by the employees. If the person is not an employee, but is an independent contractor, the employer is not responsible for providing coverage in most situations.

Under common law, the courts examine a variety of factors to determine whether a person is an employee or an independent contractor including the following:

- An employer's control over the individual's work environment.
- Method of payment (lump sum or hourly).
- Source of materials.
- An individual's right to employ other persons.
- Whether an individual maintains an independent business.
- An employer's right to terminate an individual's employment, with or without good cause.
- Payment of benefits by an employer, including insurance coverage.

BILL ANALYSIS: House Bill 892 enacts a new section to provide that a person contracts (either as an employee or independent contractor) with a driver of a truck, tractor, or tractor trailer licensed for interstate or intrastate commerce is liable for the driver's injury or death if the person does not provide for the driver to be covered under the person's workers compensation coverage. The bill allows the person to insure independent contractors under the person's blanket workers compensation policy and to be reimbursed by the independent contractor for the cost of the coverage.

The bill provides that the determination as to whether a driver is an employee or an independent contractor is to be determined by the common law test.

EFFECTIVE DATE: The bill is effective when it becomes law and applies to claims arising on or after October 1, 2003.

This summary was substantially contributed to by Tim Hovis and Walker Reagan.

H892-SMRU-003

§ 97-2. Definitions.

When used in this Article, unless the context otherwise requires –

...

(2) Employee. – The term "employee" means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer, and as relating to those so employed by the State, the term "employee" shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term "employee" shall include all officers and employees thereof, including such as are elected by the people. The term "employee" shall include members of the North Carolina national guard while on State active duty under orders of the Governor and members of the North Carolina State Defense Militia while on State active duty under orders of the Governor. The term "employee" shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee, as herein defined, of a municipality, county, or of the State of North Carolina, while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

...

§ 97-19. Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability.

Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without requiring from such subcontractor or obtaining from the Industrial Commission a certificate, issued by a workers' compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance to a self-insured subcontractor, stating that such subcontractor has complied with G.S. 97-93 hereof, shall be liable, irrespective of whether such subcontractor has regularly in service fewer than three employees in the same business within this State, to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract. If the principal contractor, intermediate contractor or subcontractor shall obtain such certificate at the time of subletting such contract to subcontractor, he shall not thereafter be held liable to any employee of such subcontractor for compensation or other benefits under this Article.

Any principal contractor, intermediate contractor, or subcontractor paying compensation or other benefits under this Article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who independently of such provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

The principal or owner may insure any or all of his contractors and their employees in a blanket policy, and when so insured such contractor's employees will be entitled to compensation benefits regardless of whether the relationship of employer and employee exists between the principal and the contractor.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 892

Committee Substitute Favorable 4/30/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H892-CSRC-67 [v.1]

5/29/2003 3:17:46 PM

Short Title: Workers Comp./Interstate Carrier Drivers. (Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO DETERMINE WHETHER A DRIVER OF A TRUCK, TRACTOR, OR TRUCK TRACTOR TRAILER OF AN INTERSTATE OR INTRASTATE MOTOR CARRIER IS AN EMPLOYEE SUBJECT TO THE WORKERS' COMPENSATION ACT AND TO DEFINE THE OBLIGATIONS UNDER THE ACT FOR SUCH DRIVERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"**§ 97-19.1. Truck, tractor, or truck tractor trailer driver's status as employee or independent contractor.**

An individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency may be an employee or an independent contractor under this Article dependent upon the application of the common law test for determining employment status.

Any principal contractor, intermediate contractor, or subcontractor, irrespective of whether such contractor regularly employs three or more employees, who contracts with an individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency, and who has not secured the payment of compensation in the manner provided for employers set forth in G.S. 97-93 for himself personally and for his employees and subcontractors, if any, shall be liable as an employer under this Article for the payment of compensation and other benefits on account of the injury or death of the independent contractor and his employees or subcontractors due to an accident arising out of and in the course of the performance of the work covered by such contract.

The principal contractor, intermediate contractor, or subcontractor may insure any and all of his independent contractors and their employees or subcontractors in a blanket

policy and when insured the independent contractors, subcontractors, and employees will be entitled to compensation benefits under the blanket policy.

A principal contractor, intermediate contractor, or subcontractor may include in the governing contract with an independent contractor in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency an agreement for the independent contractor to reimburse the cost of covering that independent contractor under the principal contractor's, intermediate contractor's, or subcontractor's coverage of his business."

SECTION 2. This act is effective when it becomes law and applies to any claim arising on or after October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 892

Committee Substitute Favorable 4/30/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H892-PCS30358-RC-67

Short Title: Workers Comp./Carrier Drivers. (Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO DETERMINE WHETHER A DRIVER OF A TRUCK, TRACTOR, OR TRUCK TRACTOR TRAILER OF AN INTERSTATE OR INTRASTATE MOTOR CARRIER IS AN EMPLOYEE SUBJECT TO THE WORKERS' COMPENSATION ACT AND TO DEFINE THE OBLIGATIONS UNDER THE ACT FOR SUCH DRIVERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 97 of the General Statutes is amended by adding a new section to read:

"**§ 97-19.1. Truck, tractor, or truck tractor trailer driver's status as employee or independent contractor.**

An individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency may be an employee or an independent contractor under this Article dependent upon the application of the common law test for determining employment status.

Any principal contractor, intermediate contractor, or subcontractor, irrespective of whether such contractor regularly employs three or more employees, who contracts with an individual in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency and who has not secured the payment of compensation in the manner provided for employers set forth in G.S. 97-93 for himself personally and for his employees and subcontractors, if any, shall be liable as an employer under this Article for the payment of compensation and other benefits on account of the injury or death of the independent contractor and his employees or subcontractors due to an accident arising out of and in the course of the performance of the work covered by such contract.

The principal contractor, intermediate contractor, or subcontractor may insure any and all of his independent contractors and their employees or subcontractors in a blanket

policy, and when insured, the independent contractors, subcontractors, and employees will be entitled to compensation benefits under the blanket policy.

A principal contractor, intermediate contractor, or subcontractor may include in the governing contract with an independent contractor in the interstate or intrastate carrier industry who operates a truck, tractor, or truck tractor trailer licensed by a governmental motor vehicle regulatory agency an agreement for the independent contractor to reimburse the cost of covering that independent contractor under the principal contractor's, intermediate contractor's, or subcontractor's coverage of his business."

SECTION 2. This act is effective when it becomes law and applies to any claim arising on or after October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 1140

Committee Substitute Favorable 4/23/03

Third Edition Engrossed 4/30/03

Short Title: North Carolina 'Quick Clearance' Act. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE QUICK REMOVAL OF VEHICLES, SPILLED CARGO, OR OTHER PERSONAL PROPERTY FROM CONTROLLED-ACCESS HIGHWAYS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 20 of the General Statutes is amended by adding a new Part to read:

"Part 9B. North Carolina 'Quick Clearance' Act.

"**§ 20-137.20. Short title.**

This Part may be known as the North Carolina 'Quick Clearance' Act.

"**§ 20-137.21. Removal of vehicles, spilled cargo, or other personal property from controlled-access highways.**

(a) The Department of Crime Control and Public Safety, the Department of Transportation, or a local law enforcement agency may immediately remove or cause to be removed any wrecked, abandoned, unattended, burned, or partially dismantled vehicle, spilled cargo, or other personal property from the roadway of a controlled-access highway if the vehicle, cargo, or personal property is creating an obstruction or hazard to traffic because of its position in relation to the highway, as determined by authorized officers or employees of the Department or agency.

(b) Vehicles, cargo, or personal property may be removed to any place within the immediate vicinity without any further action or obligation of the Department of Crime Control and Public Safety, the Department of Transportation, the local law enforcement agency, or others acting at the direction of the Department or agency. In the event of a motor vehicle accident which results in apparent serious personal injury or death, no removal shall occur until a law enforcement officer determines that adequate information has been obtained for preparation of an accident report.

(c) When the property creating an obstruction or hazard to traffic is a motor carrier, as defined in G.S. 20-4.01(21b), the agency causing the removal shall make a

reasonable effort to allow the owner of the vehicle to arrange for its removal and shall give due consideration to having the vehicle towed by a towing service capable of safely moving the vehicle in question after it has been removed from the travel way in the most expeditious manner available. The final decision on removal shall rest with the agency causing the removal.

(d) The removal of vehicles away from the immediate vicinity by law enforcement agencies pursuant to this section shall be subject to the same procedures set forth in Part 9A of this Chapter. If the Department of Transportation removes or orders the removal of a vehicle away from the immediate vicinity, the Department shall notify the Department of Crime Control and Public Safety or the local law enforcement agency, and the Department of Transportation shall follow the same procedures as in Part 9A of this Chapter, provided that the Department of Transportation may make arrangements with the Department of Crime Control and Public Safety or the local law enforcement agency to act on its behalf in complying with Part 9A of this Chapter.

(e) If the Department of Crime Control and Public Safety, the Department of Transportation, or a local law enforcement agency removes or orders the removal of spilled cargo or personal property away from the immediate vicinity, the Department or agency shall make reasonable efforts to notify the owner, if known, and shall allow the owner at least two business days, after the owner receives notification from the agency, to notify the Department or agency that the owner intends to claim the cargo or personal property.

(f) Any liability of the Department of Crime Control and Public Safety or the Department of Transportation for damage to vehicles or cargo resulting from removal pursuant to the provisions of this section shall be determined in accordance with the provisions of Article 31 of Chapter 143 of the General Statues.

(g) Any liability of a local law enforcement agency for damage to vehicles or cargo resulting from removal pursuant to the provisions of this section shall be a governmental function and shall be determined as provided in G.S. 153A-435 or G.S. 160A-485, as appropriate.

(h) The Department of Crime Control and Public Safety, the Department of Transportation, or a local law enforcement agency may require the owner or carrier, if any, of a vehicle, spilled cargo, or other personal property removed or disposed of under the authority of this section to pay for any costs incurred in the removal and subsequent disposition of the vehicle, spilled cargo, or other personal property."

SECTION 2. G.S. 20-166 is amended by adding a new subsection to read:

"(c2) If an accident or collision occurs on a main lane, ramp, shoulder, median, or adjacent area of a highway, each vehicle shall be moved as soon as possible out of the travel lane and onto the shoulder or to a designated accident investigation site to complete the requirements of this section and minimize interference with traffic if all of the following apply:

(1) The accident or collision has not resulted in injury or death to any person, or the drivers did not know or have reason to know of any injury or death.

(2) The accident or collision results only in damage to property of less than one thousand dollars ($1,000).

(3) Each vehicle can be normally and safely driven. For purposes of this subsection, a vehicle can be normally and safely driven if it does not require towing and can be operated under its own power and in its usual manner, without additional damage or hazard to the vehicle, other traffic, or the roadway."

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1140

Committee Substitute Favorable 4/23/03

Third Edition Engrossed 4/30/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H1140-CSRW-51 [v.3]

6/2/2003 3:43:52 PM

Short Title: North Carolina 'Quick Clearance' Act. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE QUICK REMOVAL OF VEHICLES, CARGO, OR OTHER PERSONAL PROPERTY FROM CONTROLLED-ACCESS HIGHWAYS AND TO ALLOW DRIVERS TO REMOVE VEHICLES FROM TRAVEL LANES OF A HIGHWAY FOLLOWING MINOR ACCIDENTS, IF THE VEHICLES CAN BE SAFELY MOVED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-161 reads as rewritten:

"**§ 20-161. Stopping on highway prohibited; warning signals; removal of vehicles from public highway.**

(a) No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled portion of any highway or highway bridge outside municipal corporate limits unless the vehicle is disabled to such an extent that it is impossible to avoid stopping and temporarily leaving the vehicle upon the paved or main traveled portion of the highway or highway bridge.

(b) No person shall park or leave standing any vehicle upon the shoulder of a public highway outside municipal corporate limits unless the vehicle can be clearly seen by approaching drivers from a distance of 200 feet in both directions and does not obstruct the normal movement of traffic.

(c) The operator of any truck, truck tractor, trailer or semitrailer which is disabled upon any portion of the highway shall display warning devices of a type and in a manner as required under the rules and regulations of the United States Department of Transportation as adopted by the Division of Motor Vehicles. Such warning devices shall be displayed as long as the vehicle is disabled.

(d) The owner of any vehicle parked or left standing in violation of law shall be deemed to have appointed any investigating law-enforcement officer his agent:

(1) For the purpose of removing the vehicle to the shoulder of the highway or to some other suitable place; and

(2) For the purpose of arranging for the transportation and safe storage of any vehicle which is interfering with the regular flow of traffic or which otherwise constitutes a hazard, in which case the officer shall be deemed a legal possessor of the vehicle within the meaning of G.S. 44A-2(d).

(e) When any vehicle is parked or left standing upon the right-of-way of a public highway for a period of 48 hours or more, the owner shall be deemed to have appointed any investigating law-enforcement officer his agent for the purpose of arranging for the transportation and safe storage of such vehicle and such investigating law-enforcement officer shall be deemed a legal possessor of the motor vehicle within the meaning of that term as it appears in G.S. 44A-2(d).

(f) Any investigating law enforcement officer, with the concurrence of the Department of Transportation, may immediately remove or cause to be removed from a controlled-access highway any wrecked, abandoned, disabled, unattended, burned, or partially dismantled vehicle, cargo, or other personal property interfering with the regular flow of traffic or which otherwise constitutes a hazard. In the event of a motor vehicle crash involving serious personal injury or death, no removal shall occur until the investigating law enforcement officer determines that adequate information has been obtained for preparation of a crash report. No state or local law enforcement officer, Department of Transportation employee or person or firm contracting or assisting in the removal or disposition of any such vehicle, cargo or other personal property shall be held criminally or civilly liable for any damage or economic injury related to carrying out or enforcing the provisions of this section.

(g) The owner shall be liable for any costs incurred in the removal, storage and subsequent disposition of a vehicle, cargo, or other personal property under the authority of this section."

SECTION 2. G.S. 20-166 is amended by adding a new subsection to read:

"(c2) If an accident or collision occurs on a main lane, ramp, shoulder, median, or adjacent area of a highway, each vehicle shall be moved as soon as possible out of the travel lane and onto the shoulder or to a designated accident investigation site to complete the requirements of this section and minimize interference with traffic if all of the following apply:

(1) The accident or collision has not resulted in injury or death to any person, or the drivers did not know or have reason to know of any injury or death.

(2) Each vehicle can be normally and safely driven. For purposes of this subsection, a vehicle can be normally and safely driven if it does not require towing and can be operated under its own power and in its usual manner, without additional damage or hazard to the vehicle, other traffic, or the roadway."

SECTION 3. This act becomes effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1140

Committee Substitute Favorable 4/23/03

Third Edition Engrossed 4/30/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H1140-PCS60366-RW-51

Short Title: North Carolina 'Quick Clearance' Act. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE QUICK REMOVAL OF VEHICLES, CARGO, OR OTHER PERSONAL PROPERTY FROM CONTROLLED-ACCESS HIGHWAYS AND TO ALLOW DRIVERS TO REMOVE VEHICLES FROM TRAVEL LANES OF A HIGHWAY FOLLOWING MINOR ACCIDENTS, IF THE VEHICLES CAN BE SAFELY MOVED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-161 reads as rewritten:

"**§ 20-161. Stopping on highway prohibited; warning signals; removal of vehicles from public highway.**

(a) No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled portion of any highway or highway bridge outside municipal corporate limits unless the vehicle is disabled to such an extent that it is impossible to avoid stopping and temporarily leaving the vehicle upon the paved or main traveled portion of the highway or highway bridge.

(b) No person shall park or leave standing any vehicle upon the shoulder of a public highway outside municipal corporate limits unless the vehicle can be clearly seen by approaching drivers from a distance of 200 feet in both directions and does not obstruct the normal movement of traffic.

(c) The operator of any truck, truck tractor, trailer or semitrailer which is disabled upon any portion of the highway shall display warning devices of a type and in a manner as required under the rules and regulations of the United States Department of Transportation as adopted by the Division of Motor Vehicles. Such warning devices shall be displayed as long as the vehicle is disabled.

(d) The owner of any vehicle parked or left standing in violation of law shall be deemed to have appointed any investigating law-enforcement officer his agent:

(1) For the purpose of removing the vehicle to the shoulder of the highway or to some other suitable place; and

(2) For the purpose of arranging for the transportation and safe storage of any vehicle which is interfering with the regular flow of traffic or which otherwise constitutes a hazard, in which case the officer shall be deemed a legal possessor of the vehicle within the meaning of G.S. 44A-2(d).

(e) When any vehicle is parked or left standing upon the right-of-way of a public highway for a period of 48 hours or more, the owner shall be deemed to have appointed any investigating law-enforcement officer his agent for the purpose of arranging for the transportation and safe storage of such vehicle and such investigating law-enforcement officer shall be deemed a legal possessor of the motor vehicle within the meaning of that term as it appears in G.S. 44A-2(d).

(f) Any investigating law enforcement officer, with the concurrence of the Department of Transportation, may immediately remove or cause to be removed from a controlled-access highway any wrecked, abandoned, disabled, unattended, burned, or partially dismantled vehicle, cargo, or other personal property interfering with the regular flow of traffic or which otherwise constitutes a hazard. In the event of a motor vehicle crash involving serious personal injury or death, no removal shall occur until the investigating law enforcement officer determines that adequate information has been obtained for preparation of a crash report. No state or local law enforcement officer, Department of Transportation employee, or person or firm contracting or assisting in the removal or disposition of any such vehicle, cargo, or other personal property shall be held criminally or civilly liable for any damage or economic injury related to carrying out or enforcing the provisions of this section.

(g) The owner shall be liable for any costs incurred in the removal, storage, and subsequent disposition of a vehicle, cargo, or other personal property under the authority of this section."

SECTION 2. G.S. 20-166 is amended by adding a new subsection to read:

"(c2) If an accident or collision occurs on a main lane, ramp, shoulder, median, or adjacent area of a highway, each vehicle shall be moved as soon as possible out of the travel lane and onto the shoulder or to a designated accident investigation site to complete the requirements of this section and minimize interference with traffic if all of the following apply:

(1) The accident or collision has not resulted in injury or death to any person or the drivers did not know or have reason to know of any injury or death.

(2) Each vehicle can be normally and safely driven. For purposes of this subsection, a vehicle can be normally and safely driven if it does not require towing and can be operated under its own power and in its usual manner, without additional damage or hazard to the vehicle, other traffic, or the roadway."

SECTION 3. This act becomes effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

HOUSE BILL 1201

Short Title:	Consecutive Water Systems/Manufactured Homes.	(Public)
Sponsors:	Representative Allred.	
Referred to:	Public Utilities.	

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO PROMOTE WATER CONSERVATION BY EXPANDING THE DEFINITION OF CONTIGUOUS PREMISES TO INCLUDE MANUFACTURED HOMES AND MANUFACTURED HOME PARKS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-110(g) reads as rewritten:

"(g) For the purpose of encouraging water conservation, the Commission may, consistent with the public interest, adopt procedures that allow a lessor, pursuant to a written rental agreement, to allocate the costs for providing water and sewer service on a metered use basis to persons who occupy the same contiguous premises. A written rental agreement shall specify a monthly rent that shall be the sum of the base rent plus additional rent at a rate that does not exceed the actual purchase price of the water and sewer service to the provider plus a reasonable administrative fee. The Commission shall issue rules to define contiguous premises and to implement this subsection. In issuing the rule to define contiguous premises, the Commission shall consider contiguous premises where manufactured homes, as defined in G.S. 143-145(7), or spaces for manufactured homes are rented. Notwithstanding any other provision of this Chapter, the Commission shall determine the extent to which the services shall be regulated and, to the extent necessary to protect the public interest, regulate the terms, conditions, and rates that may be allocated for the services. Nothing in this subsection shall be construed to alter the rights, obligations, or remedies of persons providing water and sewer services and their customers under any other provision of law."

SECTION 2. In enacting Section 1 of this act, it is the intent of the General Assembly to promote water conservation while protecting public health, safety, welfare, and the environment and avoiding unduly burdensome requirements on consecutive water systems. Section 1 of this act shall not be construed to impose any requirement on a supplying water system other than the requirements that apply to the water system on the date this act becomes effective and that would apply to the supplying water system if a consecutive water system had not been authorized.

SECTION 3. This act is effective when it becomes law.

HB1201: Consecutive Water Systems/Manufactured Homes

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Allred
Date:	June 3, 2003	**Summary by:**	Steven Rose
Version:	1		Committee Counsel

SUMMARY: ***HB1201 permits an expanded definition of contiguous premises so that landlords who rent spaces for manufactured homes, or who rent manufactured homes, may sub meter water and sewer services just as apartment landlords may. The act is effective when it becomes law.***

CURRENT LAW: G.S. 62-110(g) allows persons who rent contiguous premises to others, typically in an apartment complex, to meter water consumption of each tenant and charge each tenant for actual usage by the tenant at the same cost the landlord pays the supplier of the water, plus an administrative charge that is regulated by the Utilities Commission. This means that the landlord does not have to go through all the steps necessary to obtain a regular public utility franchise and have its rates approved by the Commission.

BACKGROUND: The purpose of G.S. 62-110(g) is to pass the actual cost of water consumption on to tenants in order to encourage water conservation.

H1201-SMRL-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 994

Committee Substitute Favorable 4/23/03

Short Title: Public Works Exemption. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT ALLOWING THE STATE, COUNTIES, AND CITIES TO CONSTRUCT PRE-ENGINEERED STRUCTURES WITHOUT HAVING THE PLANS AND SPECIFICATIONS FOR THE STRUCTURES REVIEWED BY A REGISTERED ARCHITECT OR ENGINEER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 133-1.1(c) reads as rewritten:

"(c) The following shall be excepted from the requirements of subsection (a) of this section:

(1) Dwellings and outbuildings in connection therewith, such as barns and private garages.

(2) Apartment buildings used exclusively as the residence of not more than two families.

(3) Buildings used for agricultural purposes other than schools or assembly halls which are not within the limits of a city or an incorporated village.

(4) Temporary buildings or sheds used exclusively for construction purposes, not exceeding 20 feet in any direction, and not used for living quarters.

(5) Pre-engineered garages, sheds, and workshops used exclusively by city, county, or State employees for purposes related to their employment."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 994:
Public Works Exemption

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Representative K. Williams
Date:	June 3, 2003	**Summary by:**	Wendy Graf Ray
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 994 would exempt certain structures from the requirement that plans and specifications be reviewed by a registered architect or engineer.***

CURRENT LAW: When an officer, board, department, or commission enters into a construction contract involving the expenditure of public funds, G.S. 133-1.1 requires that plans and specifications be prepared by a registered architect, registered engineer, or both (depending on the type of work involved) in the following situations:

- Expenditure of funds exceeds $300,000 for repairs that do not include major structural change in framing or foundation support systems.
- Expenditure of funds exceeds $100,000 for repairs that affect life safety systems.
- Expenditure of funds exceeds $135,000 for repairs that do include major structural change in framing or foundation support systems.
- Expenditure of funds exceeds $135,000 for construction of, or additions to, public buildings or State-owned and operated utilities.

The architect and/or engineer is required to make inspections of the project and issue a certificate of compliance once he or she is satisfied that the contractor has fulfilled the obligations of the plans, specifications, and contract.

G.S. 133-1.1(c) specifically exempts the following structures from the requirement that plans and specifications be prepared by an architect or engineer:

- Dwellings and outbuildings such as barns and private garages.
- Apartment buildings used as the residence of not more than two families.
- Buildings, other than schools or assembly halls, that are used for agricultural purposes and are outside the limits of a city or incorporated village.
- Temporary buildings used exclusively for construction purposes that do not exceed 20 feet in any direction.

BILL ANALYSIS: House Bill 994 would add to the list of exemptions set out in G.S. 133-1.1(c) any pre-engineered garage, shed, or workshop that is used exclusively by city, county, or State employees for purposes related to their employment.

EFFECTIVE DATE: The bill would be effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 994

S. B. No. _____

COMMITTEE SUBSTITUTE _____

DATE 6-3-03

Amendment No. #1
(to be filled in by Principal Clerk)

Rep.) PURCELL
Sen.)

1 moves to amend the bill on page 1, line 21
2 ( ) WHICH CHANGES THE TITLE
3 by inserting after the word "county," the
4 words "public school,"
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SIGNED William N Purcell

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H **D**

HOUSE BILL 994

Committee Substitute Favorable 4/23/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H994-PCS60365-SU-27

Short Title: Public Works Exemption. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT ALLOWING THE STATE, COUNTIES, AND CITIES TO CONSTRUCT PREENGINEERED STRUCTURES WITHOUT HAVING THE PLANS AND SPECIFICATIONS FOR THE STRUCTURES REVIEWED BY A REGISTERED ARCHITECT OR ENGINEER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 133-1.1(c) reads as rewritten:

"(c) The following shall be excepted from the requirements of subsection (a) of this section:

(1) Dwellings and outbuildings in connection therewith, such as barns and private garages.

(2) Apartment buildings used exclusively as the residence of not more than two families.

(3) Buildings used for agricultural purposes other than schools or assembly halls which are not within the limits of a city or an incorporated village.

(4) Temporary buildings or sheds used exclusively for construction purposes, not exceeding 20 feet in any direction, and not used for living quarters.

(5) Preengineered garages, sheds, and workshops used exclusively by city, county, public school, or State employees for purposes related to their employment."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H 2

HOUSE BILL 1181
Committee Substitute Favorable 4/30/03

Short Title: Workplace Safety/Reinspections. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT REQUIRING THE REINSPECTION OF WORKPLACES WHERE WILLFUL SERIOUS VIOLATIONS HAVE BEEN FOUND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-136(a) reads as rewritten:

"(a) In order to carry out the purposes of this Article, the Commissioner or Director, or their duly authorized agents, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized:

(1) To enter without delay, and at any reasonable time, any factory, plant, establishment, construction site, or other area, work place or environment where work is being performed by an employee of an employer; and

(2) To inspect and investigate during regular working hours, and at other reasonable times, and within reasonable limits, and in a reasonable manner, any such place of employment and all pertinent conditions, processes, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

(3) The Commissioner or Director, or their duly authorized agents, shall reinspect any place of employment where a willful serious violation was found to exist during the previous inspection and a final Order has been entered."

SECTION 2. This act becomes effective January 1, 2004, and applies to all inspections conducted on or after that date.

HOUSE BILL 1181:
Workplace Safety/Re-inspection.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Goodwin
Date:	June 3, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Second Edition		

SUMMARY: ***House Bill 1181 would amend the Occupational Safety and Health Act (OSHA) to require a re-inspection of any work place where a willful serious violation was found during a previous inspection.***

CURRENT LAW: After being cited for an OSHA violation, employers are required to file a certification of abatement of hazardous conditions if they do not contest a citation, or the citation becomes a final Order. The Department of Labor may, but is not required, to return to the work place to verify that abatement has occurred.

BILL ANALYSIS: Section 1 of the bill adds a requirement that mandates that the NC Department of Labor re-inspect a work place where a willful serious violation was found to exist during a previous inspection. The inspection would take place after all appeals have been resolved and the employer was found to have willfully violated the Occupational Safety and Health Act.

EFFECTIVE DATE: The bill is effective on January 1, 2004, and applies to inspections on or after that date.

This summary was substantially contributed to by Hal Pell, Counsel to the House Occupational Safety and Health Committee.

H1181-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1182

Committee Substitute Favorable 4/30/03

Short Title: OSHA Tech. Changes/Fatality Penalty. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CHANGES TO THE OCCUPATIONAL SAFETY AND HEALTH ACT AND TO ENHANCE THE PENALTY IF A WILLFUL VIOLATION OF THE ACT CAUSES AN EMPLOYEE'S DEATH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-138 reads as rewritten:

"**§ 95-138. Civil penalties.**

~~(a) Any employer who willfully or repeatedly violates the requirements of this Article, any standard, rule or order promulgated pursuant to this Article, or regulations prescribed pursuant to this Article, may upon the recommendation of the Director to the Commissioner be assessed by the Commissioner a civil penalty of not more than seventy thousand dollars ($70,000) and not less than five thousand dollars ($5,000) for each willful violation. Any employer who has received a citation for a serious violation of the requirements of this Article or any standard, rule, or order promulgated under this Article or of any regulation prescribed pursuant to this Article, shall be assessed by the Commissioner a civil penalty of up to seven thousand dollars ($7,000) for each serious violation. If the violation is adjudged not to be of a serious nature, then the employer may be assessed a civil penalty of up to seven thousand dollars ($7,000) for each nonserious violation. Any employer who fails to correct a violation for which a citation has been issued under this Article within the period allowed for its correction (which period shall not begin to run until the date of the final order of the Board in the case of any appeal proceedings in this Article initiated by the employer in good faith and not solely for the delay or avoidance of penalties), may be assessed a civil penalty of not more than seven thousand dollars ($7,000). The assessment shall be made to apply to each day during which the failure or violation continues. Any employer who violates any of the posting requirements, as prescribed under the provision[s] of this Article, shall be assessed a civil penalty of not more than seven thousand dollars ($7,000) for the violation. The Commissioner upon recommendation of the Director, or the Board in case of an appeal, shall have authority to assess all civil penalties provided by this~~

~~Article, giving due consideration to the appropriateness of the penalty with respect to the following factors:~~

~~(1) Size of the business of the employer being charged,~~

~~(2) The gravity of the violation,~~

~~(3) The good faith of the employer, and~~

~~(4) The record of previous violations; provided that for purposes of determining repeat violations, only the record within the previous three years is applicable.~~

~~The Commissioner shall adopt uniform standards which the Commissioner, the Board, and the hearing examiner shall apply when considering the four factors for determining appropriateness of the penalty. The report of the hearing examiner and the report, decision, or determination of the Board on appeal shall specify the standards applied in determining the reduction or affirmation of the penalty assessed by the Commissioner.~~

~~(b) The clear proceeds of all civil penalties and interest recovered by the Commissioner, together with the costs thereof, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.~~

(a) The Commissioner, upon recommendation of the Director, may assess penalties against any employer who violates the requirements of this Article, or any standard, rule, or order promulgated pursuant to this Article, as follows:

(1) A minimum penalty of five thousand dollars ($5,000) to a maximum penalty of seventy thousand dollars ($70,000) for each willful or repeat violation;

(2) A maximum penalty of seven thousand dollars ($7,000) for each nonserious or serious violation;

(3) A maximum penalty of seven thousand dollars ($7,000) for each day that an employer fails to correct and abate a violation, within the period allowed for its correction and abatement which period shall not begin to run until the date of the final Order of the Board in the case of any appeal proceedings in this Article initiated by the employer in good faith and not solely for the delay of avoidance of penalties;

(4) A maximum penalty of seven thousand dollars ($7,000) for violating the posting requirements, as required under the provisions of this Article; and

(5) A minimum penalty of five thousand dollars ($5,000) to a maximum penalty of one hundred thousand dollars ($100,000) for each willful or repeat violation which results in the death of an employee or employees. The penalty for a fatality-related violation shall be in lieu of any penalty under subdivision (1) of this subsection.

(b) The Commissioner shall adopt uniform standards which the Commissioner, the Board, and the hearing examiner shall apply when determining appropriateness of the penalty. The following factors shall be used in determining whether a penalty is appropriate:

(1) Size of the business of the employer being charged,

(2) The gravity of the violation,
(3) The good faith of the employer, and
(4) The record of previous violations; provided that for purposes of determining repeat violations, only the record within the previous three years is applicable.

The report of the hearing examiner and the report, decision, or determination of the Board on appeal shall specify the standards applied in determining the reduction or affirmation of the penalty assessed by the Commissioner.

(c) The clear proceeds of all civil penalties and interest recovered by the Commissioner, together with the costs thereof, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 2. This act becomes effective January 1, 2004, and applies to violations occurring on or after that date.

HOUSE BILL 1182:
OSHA Tech. Changes/Fatality Penalty.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Goodwin
Date:	June 3, 2003	**Summary by:**	O. Walker Reagan,
Version:	Second Edition		Committee Co-Counsel

SUMMARY: ***House Bill 1182 would clarify the penalty section of the Occupational Safety and Health Act (OSHA). The section would be amended to add a specific penalty for a willful violation that causes the death of an employee. The act would become effective January 1, 2004, and would apply to violations occurring on or after that date.***

CURRENT LAW: The current law provides for a minimum penalty of $5,000 and the maximum penalty of $70,000 for a willful or repeated violation of the OSHA laws.

BILL ANALYSIS: Section 1 of the bill rewrites the existing penalty statute of the OSHA law to clarify the types and amounts of penalties that may be issued for violations of OSHA.

This section would also add to the new G.S. 90-138(a) subdivision (5) that provides for a specific penalty for a willful violation that results in the death of an employee. The penalty would be a minimum of $5,000 and a maximum of $100,000. The same adjustment factors that would apply to willful violations would be applicable to the new penalty. The penalty would be in lieu of any penalty that might otherwise apply to a willful violation.

Other than establishing the new penalty for willful violations resulting in the death of an employee, all other existing penalties and fine limits remain the same as current law.

EFFECTIVE DATE: The bill would become effective January 1, 2004, and would apply to violations occurring on or after that date.

This summary was contributed to by Hal Pell, Counsel to the House Occupational Safety and Health Committee.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 3, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amanda Reeder	Intern
Derrick Henderson	NCDA&CS
Kevin Tull	Intern
John Hoomani	NCDOL
Art Britt	NCDOL
KEVIN BEAUREGARD	NLDOL
Lisa Page	CCNC
CASANDRA SKINNER	CCPS
Elizabeth Dalton	Bailey & Dixon
Crissy Porter	Smith Anderson
Caroline Wiggins	DOT

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 3, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sharon Dooley	Sen. J. Forester
Leon M Kellum	Mayor of Van Alstyne
Kara Leonard	WCSR
Mark Monschke	Rayzor & Sparrow
Paul Pulley	Pulley, Watson K & L
Richard O'Brien	PFFPNC
Hank Patterson	Patterson Hickey & Lawrence
Greg Duncan	NFIB
Parker	Smith Anderson
TSI	
Dan Hoy	TSI

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 3, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
B.J. Rhinehardt	DOA - P&C
Sharon Hayes	DOA
Von Williams	CCPS
Courtney L. Beverly	DOI
J.F. Brown	SCA
Jessica Miles	NC DENR - Public Water Supply
Roger Bone	Bode & Associates
R. James Lore	R. James Lore Atty at law
Clarinda (Rinny) Stephens	SCC
Shawn McGibbon	SCC
Camille Stell	KCLti

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 3, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Barbara Morales Burke	NCDOT
Louis Belo	NC DOT
Frank Folger	NCDOT
DAVID BARNETT	Poyner & Spruill
Phil Kirk	NCCBI
John O'Hale	Davis Office
Cam Cowan	BPOHL
John Phelps	NCLM
Mark Summers	Carolina Cartridge Systems
Sharon Summers Dills	Carolina Cartridge Systems
Abby Youngkin	Intern

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 3, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Julia Cummings	Intern
Charlie Dickl	NCTA
Andy Lee	Public Staff - NC Utilities Comm.
Bob Gillam	Public Staff NCUC
Fran Cockman	NC statewatch
Sandy Sarts	WCSR
Jon Teague	MVA
David Crawford	AIA NC
Jackie Lyerly	NC DOT
Lori Harris	L. A. Harris & Assoc.
Tom Sri	NCLM
Fran Preston	NCRMA
Andy Ellen	NCRMA

Senate Commerce Committee
Thursday, June 5, 2003, 9:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 550	Crematory Act Changes.	Senator Hagan
HB 270	Insurance Technical Corrections.-AB	Representative Setzer
HB 974	State Purchases of Substitute for Milk.	Representative Hill
HB 986	MV Insurer To Disclose Financial Interest.	Representative Lucas
HB 1066	Health Plans Disclose Fee Schedules/Coding.	Representative Wilson Representative Alexander
HB 1129	2003 Omnibus Labor Law Changes.	Representative Fox Representative West

Presentations

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Thursday, June 5, 2003 at 9:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:00 a.m. on Thursday, June 5, 2003, in Room 1027 of the Legislative Building. Sixteen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced the pages: Nathan Diefes of Whiteville, sponsored by Senator Soles; and Elizabeth Brim of Asheboro, sponsored by Senator Marc Basnight.

Senator Soles introduced Representative Marvin Lucas to explain HB 986, MV Insurer To Disclose Financial Interest. Senator Tony Rand moved to adopt a committee substitute. The motion carried. Senator Rand moved an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Senator Soles introduced Representative Dewey Hill to explain HB 974, State Purchases of Substitute for Milk. Senator William Purcell moved to adopt a committee substitute. The motion carried. Mr. Glen Hardy from the Department of Agriculture Policy Analysis staff spoke in favor of the committee substitute. Senator Rand moved an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Senator Soles introduced Representative Stan Fox to explain HB 1129, 2003 Omnibus Labor Law Changes. Senator Tony Moore moved a favorable report of the bill. The motion carried.

Senator Soles introduced Representative Connie Wilson to explain HB 1066, Health Plans Disclose Fee Schedules/Coding. Senator Rand moved to send the bill to a subcommittee. The motion carried.

Senator Soles introduced Mr. Frank Folger of the Department of Insurance to explain HB 270, Insurance Technical Corrections-AB in the absence of Representative Mitchell Setzer. Senator Tom Apodaca moved a favorable report of the bill. The motion carried.

Senator Soles recognized Senator Kay Hagan to explain SB 550, Crematory Act Changes. Senator John Kerr moved to adopt a committee substitute. The motion carried. Mr. Mark Henderson, Executive Director of the Board of Mortuary Sciences explained the bill further. Mr. John Carr, representing the North Carolina Funeral Directors Association, reported that the Association supports the bill. Mr. Steve Bryan, an owner and operator of a funeral business in Hyde County and a member of a Focus Group made up of operators in rural areas, spoke in favor of the first part of the bill, but commented that technical changes such as increased education requirements would be a hardship for small funeral business concerns. He encouraged having more discussions of those issues to make the bill more palatable to rural funeral businesses. Mr. Jody Tyson of Snow Hill, spoke in agreement with Mr. Bryan. Senator Apodaca moved to give an unfavorable report to the bill, but favorable report to the committee substitute. The motion carried.

The meeting adjourned at 9:55 a.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Thursday, June 05, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **270** Insurance Technical Corrections.-AB
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1) **1129** 2003 Omnibus Labor Law Changes.
Sequential Referral: Finance
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **974** State Purchases of Substitute for Milk.
Draft Number: PCS 30361
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Monday, June 09, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **986** MV Insurer To Disclose Financial Interest.

Draft Number:	PCS 70343
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

CORRECTED REPORT

Monday, June 09, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **550** Crematory Act Changes.

Draft Number:	PCS 85252
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 986

Committee Substitute Favorable 4/29/03

Third Edition Engrossed 4/30/03

Short Title: MV Insurer To Disclose Financial Interest. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A MOTOR VEHICLE INSURER TO DISCLOSE ANY FINANCIAL INTEREST IN A RECOMMENDED REPAIR FACILITY OR SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-180(b1) reads as rewritten:

"(b1) No insurer or insurer representative shall recommend the use of a particular motor vehicle repair service without clearly informing the claimant that (i) the claimant is under no obligation to use the recommended repair service, (ii) the claimant may use the repair service of the claimant's choice, ~~and~~ (iii) the amount determined by the insurer to be payable under the policy will be paid regardless of whether or not the claimant uses the recommended repair ~~service.~~service, and (iv) that the insurer or insurer representative has, at the time the recommendations are made, a financial interest in the recommended motor vehicle repair service. As used in this subsection, the term 'financial interest' includes any direct repair or preferred repair facility where the insurer has a contract to receive discounts on parts, labor, or for any other financial concession. No insurer shall require the insured or claimant to have his vehicle repaired at an insurer-owned shop."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 986

Committee Substitute Favorable 4/29/03
Third Edition Engrossed 4/30/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H986-CSRC-72 [v.3]

6/4/2003 3:59:24 PM

Short Title: MV Insurer To Disclose Financial Interest. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A MOTOR VEHICLE INSURER TO DISCLOSE ANY FINANCIAL INTEREST IN A RECOMMENDED REPAIR FACILITY OR SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-180(b1) reads as rewritten:

"(b1) No insurer or insurer representative shall recommend the use of a particular motor vehicle repair service without clearly informing the claimant that (i) the claimant is under no obligation to use the recommended repair service, (ii) the claimant may use the repair service of the claimant's choice, ~~and~~ (iii) the amount determined by the insurer to be payable under the policy will be paid regardless of whether or not the claimant uses the recommended repair ~~service.~~service, and (iv) that the insurer or insurer representative has, at the time the recommendations are made, a financial interest in the recommended motor vehicle repair service. No insurer shall require that the insured or claimant must have a damaged vehicle repaired at an insurer-owned motor vehicle repair service."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 986:
MV Insurer to Disclose Financial Interest

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Representative Lucas
Date:	June 4, 2003	**Summary by:**	Kory J. Goldsmith Committee Counsel
Version:	Proposed Committee Substitute H986-CSRC-72[v.3]]		

SUMMARY: ***HB986 would require an insurer or insurer representative to disclose any financial interest they had in an auto repair service to an auto insurance claimant prior to recommending that the claimant use that particular auto repair service. It would also prohibit an insurer from requiring that the insured or claimant must have the damaged vehicle repaired at the insurer-owned repair service.***

CURRENT LAW: G.S. 58-3-180 prohibits an insurer or an insurer representative from requiring a claimant under an auto insurance policy from using a particular motor vehicle repair service ("repair service"). It also requires that if an insurer or insurer representative recommends a particular repair service, they must disclose that the claimant is not required to use that service, that the claimant is free to use a repair service of the claimant's choice, and that the amount the insurer determines is payable under the policy will be paid regardless of which repair service the claimant uses. Insurer representative includes an insurance agent, limited representative, broker, adjuster and appraiser. G.S. 58-33-76 prohibits an insurance company, agent, adjuster or appraiser, or any persons employed by them, to accept any remuneration from a repair service in exchange for recommending the use of that repair service.

An insurer or insurer representative who violates G.S. 58-3-180 or G.S. 58-33-76 may be subject to the following penalties:

- Suspension, probation, revocation or nonrenewal of their license.
- Monetary penalty of between $100 and $2,000.
- Providing restitution to the injured party.

BILL ANALYSIS:

Section 1 adds an additional discloser an insurer or insurer representative must make to a claimant. It requires that if the insurer or insurer representative recommends a repair service to a claimant, and if insurer or insurer representative has a financial interest in the repair service, the insurer or insurer representative must disclose that financial interest to the claimant. It also prohibits an insurer from requiring that an insured or a claimant must use an insurer-owned motor vehicle repair service.

BACKGROUND: During 2002, California considered legislation to prohibit insurers from having any financial interest in repair shops and require insurers to divest any financial interest within a period of years. The legislation did not become law. Texas is considering legislation similar to the California proposal.

The act is effective when it becomes law.

§ 58-3-180. Motor vehicle repairs; selection by claimant.

(a) A policy covering damage to a motor vehicle shall allow the claimant to select the repair service or source for the repair of the damage.

(b) The amount determined by the insurer to be payable under a policy covering damage to a motor vehicle shall be paid regardless of the repair service or source selected by the claimant.

(b1) No insurer or insurer representative shall recommend the use of a particular motor vehicle repair service without clearly informing the claimant that (i) the claimant is under no obligation to use the recommended repair service, (ii) the claimant may use the repair service of the claimant's choice, and (iii) the amount determined by the insurer to be payable under the policy will be paid regardless of whether or not the claimant uses the recommended repair service.

(b2) The provisions of subsection (b1) of this section shall be included in nonfleet private passenger motor vehicle insurance policy forms promulgated by the Bureau and approved by the Commissioner.

(c) Any person who violates this section is subject to the applicable provisions of G.S. 58-2-70 and G.S. 58-33-46, provided that the maximum civil penalty that can be assessed under G.S. 58-2-70(d) for a violation of this section is two thousand dollars ($2,000).

(d) As used in this section, "insurer representative" includes an insurance agent, limited representative, broker, adjuster, and appraiser.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 986

Committee Substitute Favorable 4/29/03

Third Edition Engrossed 4/30/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H986-PCS70343-RC-72

Short Title: MV Insurer To Disclose Financial Interest. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A MOTOR VEHICLE INSURER TO DISCLOSE ANY FINANCIAL INTEREST IN A RECOMMENDED REPAIR FACILITY OR SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-180(b1) reads as rewritten:

"(b1) No insurer or insurer representative shall recommend the use of a particular motor vehicle repair service without clearly informing the claimant that (i) the claimant is under no obligation to use the recommended repair service, (ii) the claimant may use the repair service of the claimant's choice, ~~and~~ (iii) the amount determined by the insurer to be payable under the policy will be paid regardless of whether or not the claimant uses the recommended repair ~~service.~~service, and (iv) that the insurer or insurer representative has, at the time the recommendations are made, a financial interest in the recommended motor vehicle repair service. No insurer shall require that the insured or claimant must have a damaged vehicle repaired at an insurer-owned motor vehicle repair service."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 974

Short Title:	State Purchases of Substitute for Milk.	(Public)
Sponsors:	Representatives Hill; and Church.	
Referred to:	State Government.	

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT ANY DEPARTMENT, INSTITUTION, OR AGENCY OF THE STATE FROM PURCHASING FOOD PRODUCTS CONTAINING MILK PROTEIN CONCENTRATE OR RECONSTITUTED MILK.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-59.3. No contracts for the purchase of products containing milk protein concentrate or reconstituted milk.**

No department, institution, or agency of the State shall enter into a contract for the purchase of any food product that lists 'milk protein concentrate' on the label as an ingredient. No department, institution, or agency of the State shall enter into a contract for the purchase of any fluid milk product that lists 'reconstituted milk' on the label as an ingredient."

SECTION 2. This act becomes effective October 1, 2003, and applies to contracts entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 974
PROPOSED SENATE COMMITTEE SUBSTITUTE H974-PCS30361-LB-67

Short Title: State Purchases of Substitute for Milk. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT STATE AGENCIES FROM PURCHASING RECONSTITUTED MILK.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-59.3. No contracts for the purchase of reconstituted or recombined milk.**

No department, institution, or agency of the State shall enter into a contract for the purchase of any fluid milk that has as a part of its label the term "reconstituted" or "recombined"."

SECTION 2. This act becomes effective October 1, 2003, and applies to contracts entered into on or after that date.

HOUSE BILL 974:
State Purchases of Substitute for Milk.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Hill
Date:	June 5, 2003	**Summary by:**	Karen Cochrane Brown Committee Co-Counsel
Version:	Proposed Committee Substitute H974-PCS30361-LB-67		

SUMMARY: ***The Proposed Committee Substitute for House Bill 974 prohibits any department, institution, or agency of the State from purchasing fluid milk that has as a part of its label the term "reconstituted or recombined."***

BILL ANALYSIS:

The Proposed Committee Substitute for House Bill 974 adds a new section to Article 3 in Chapter 143 of the General Statutes, covering Purchases and Contracts. This section would prohibit departments, institutions and agencies of the State, such as the Department of Corrections, from entering into a contract to purchase fluid milk listing "reconstituted" or "recombined" on the label.

The bill does not define the terms "reconstituted or "recombined". However, Robert Cropp, of the University of Wisconsin-Platteville, states that:

"Reconstituted milk is a fluid milk product produced by adding water to condensed or dried milk components. Usually, fat and nonfat components are separated prior to condensing or drying. Reconstitutable ingredients include dry whole milk, nonfat dry milk, reverse-osmosis concentrated skim milk, cream, anhydrous milkfat and unsalted butter. This should not be confused with 'filled milk', which is made from skim milk and some type of vegetable oil. Reconstituted milk also refers to fluid milk blends consisting of whole milk, water and condensed or dried milk components."

This act would become effective on October 1, 2003 and applies to contracts entered into on or after that date.

Theresa Matula, Committee Staff to the House State Government Committee, contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1129

Committee Substitute Favorable 4/17/03

Short Title: 2003 Omnibus Labor Law Changes. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO REVISE SERVICE REQUIREMENTS TO CONFORM WITH RULE 4 OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE, AND TO MAKE TECHNICAL AND OTHER CHANGES TO THE WAGE AND HOUR ACT AND THE PRIVATE PERSONNEL SERVICES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-25.23(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.5 (Youth Employment) or any regulation issued thereunder, shall be subject to a civil penalty not to exceed two hundred fifty dollars ($250.00) for each violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 2. G.S. 95-25.23A(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.15(b) or any regulation issued pursuant to G.S. 95-25.15(b), shall be subject to a civil penalty of up to two hundred fifty dollars ($250.00) per employee with the maximum not to exceed one thousand dollars ($1,000) per investigation by the Commissioner or his authorized representative. In determining the amount of the penalty, the Commissioner shall consider:

(1) The appropriateness of the penalty for the size of the business of the employer charged; and

(2) The gravity of the violation.

The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified ~~mail,~~ mail or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 3. G.S. 95-110.10(e) reads as rewritten:

"(e) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the person charged with the violation takes exception to the determination in which event the final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 4. G.S. 95-111.13(g) reads as rewritten:

"(g) The determination of the amount of the penalty by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified ~~mail,~~ mail or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 5. G.S. 95-123 reads as rewritten:

"**§ 95-123. Orders.**

If, after investigation, the Commissioner finds that a violation of any of his rules and regulations exists, or that there is a condition in passenger tramway construction, operation, or maintenance which endangers the safety of the public, the Commissioner shall forthwith issue his written order setting forth his findings, the corrective action to be taken, and fixing a reasonable time for compliance therewith. The order shall be sent to the affected operator by certified mail or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt and shall become final unless the operator contests the order by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the order. The Commissioner shall have the power to institute injunctive proceedings in any court of competent jurisdiction of the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, in which the passenger tramway is located for the purpose of restraining the operation of said tramway or for compelling compliance with any lawful order of the Commissioner. Judicial review of a final decision under this section may be obtained under Article 4 of Chapter 150B of the General Statutes."

SECTION 6. G.S. 95-137(b) reads as rewritten:

"(b) Procedure for Enforcement. –

(1) If, after an inspection or investigation, the Director issues a citation under any provisions of this Article, the Director shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified ~~mail~~ mail, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery of any penalty, if any, the Director has recommended to the Commissioner to be proposed under the provisions of this Article and that the employer has 15 working days within which to notify the Director that the employer wishes to:

a. Contest the citation or proposed assessment of penalty; or

b. Request an informal conference.

Following an informal conference, unless the employer and Department have entered into a settlement agreement, the Director shall send the employer an amended citation or notice of no change. The employer has 15 working days from the receipt of the amended citation or notice of no change to notify the Director that the employer wishes to contest the citation or proposed assessment of penalty, whether or not amended. If, within 15 working days from the receipt of the notice issued by the Director, the employer fails to notify the Director that the employer requires an informal conference to be held or intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under the provisions of this Article within such time, the citation and the assessment as proposed to the Commissioner shall be deemed final and not subject to review by any court.

(2) If the Director has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Board in case of any review proceedings under this Article initiated by the employer in good faith and not solely for a delay or avoidance of penalties), the Director shall notify the employer by certified ~~mail~~ mail, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery of such failure and of the penalty proposed to be assessed under this Article by reason of such failure and that the employer has 15 working days within which to notify the Director that the employer wishes to contest the Director's notification of the proposed assessment of penalty. If, within 15 working days from the receipt of notification issued by the Director, an employer fails to notify the Director that the employer intends to contest the notification or proposed recommendation of penalty, the notification and the proposed assessment made by the Director shall be final and not subject to review by any court.

(3) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(4) If an employer notifies the Director that the employer intends to contest a citation issued under the provisions of this Article or notification issued under the provisions of this Article, or if, within 15 working days of the receipt of a citation under this Article, any employee or representative thereof files a notice with the Director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Director shall immediately advise the Board of such notification, and the Board shall afford an opportunity for a hearing. The Board shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Director's citation or the proposed penalty fixed by the Commissioner, or directing other appropriate relief, and such order shall become final 30 days after its issuance. Upon showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that an abatement has not been completed because of factors beyond the employer's reasonable control, the Director, after an opportunity for a hearing as provided in this Article, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the chairman of the Board shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this section.

(5) Repealed by Session Laws 1993, c. 300, s. 2.

(6) Each local unit of government shall report each violation for which it is issued a citation to its local governing board at its next public meeting and to its workers compensation insurance carrier or to the risk pool of which it is a member pursuant to Article 23 of Chapter 58 of the General Statutes."

SECTION 7. G.S. 95-234(a) reads as rewritten:

"**§ 95-234. Violation of controlled substance examination regulations; civil penalty.**

(a) Any examiner who violates the provisions of this Article shall be subject to a civil penalty of up to two hundred fifty dollars ($250.00) per affected examinee with the maximum not to exceed one thousand dollars ($1,000) per investigation by the Commissioner of Labor or his authorized representative. In determining the amount of the penalty, the Commissioner shall consider:

(1) The appropriateness of the penalty for the size of the business of the employer charged; and

(2) The gravity of the violation.

The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified ~~mail,~~ mail or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the person charged with the violation takes exception to the determination, in which event final

determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and which final determination shall be subject to judicial review in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 8. G.S. 95-25.3A is repealed.

SECTION 9. G.S. 95-47.2 reads as rewritten:

"**§ 95-47.2. Licensing procedures.**

(a) No person shall open, keep, maintain, own, operate or carry on a private personnel service unless the person has first procured a license therefor as provided in this Article.

(b) An application for license shall be made to the Commissioner. If the private personnel service is owned by an individual, the application shall be made by that individual; if the service is owned by a partnership, the application shall be made by all partners; if the service is owned by a corporation, the application shall be made by all stockholders who own at least twenty percent (20%) of the issued and outstanding voting stock of the corporation, or if the service is owned by an association, society, or corporation in which no one individual owns at least twenty percent (20%) of the issued and outstanding voting stock, the application shall be made by the president, vice-president, secretary and treasurer of the owner, by whatever title designated. The application shall state the name and address of the individual who is responsible for the direction and operation of the placement activities of the private personnel service whether that individual be one of the applicants or another person; whether or not that individual has ever been employed in a private personnel service; the name and address of each of the license applicant's prior employers during the five years immediately preceding the license application; and such other information relating to the good moral character of that individual as the Commissioner may require. No change in such persons shall take place without prior notification to the Commissioner.

(c) Each application for license shall be in writing and in the form prescribed by the Commissioner, and shall state truthfully the name under which the business is to be conducted; the street and number of the building or place where the business is to be conducted.

(d) Upon the receipt of an application for a license the Commissioner:

(1) Shall publish a notice of the pending application in a newspaper of general circulation in the area of the proposed location of the employment agency and may publish the notice in a newspaper of general circulation in each area in which the applicant (or if a corporation, the president and majority shareholder) has resided during the five years preceding the time of the application. <u>The applicant shall incur the cost associated with the publication of this legal advertisement.</u> The notice shall include a statement informing individuals of their right to protest the issuance of a license by filing within 10 days written comments with the Commissioner. The protest shall be in writing and signed by the person filing the protest or by his authorized agent or attorney, and shall state reasons why the license should not be granted. Upon the filing of a protest, the Commissioner,

if he determines the protest to be of such a nature that a hearing should be conducted and that the protest is for a cause on which denial of a license may properly be based, shall appoint a time and place for a hearing on the application and shall give at least seven days' notice of that time and place to the license applicant and to the person filing the protest. The hearing shall be conducted in accordance with the provisions of the rules of the Administrative Procedure ~~Act;~~Act.

(2) Shall investigate the character, criminal record and business integrity of each applicant for agency license and shall investigate the criminal records of all persons listed as agency owners, officers, directors or managers. The applicant and all agency owners, officers, directors and managers shall assist the department in obtaining necessary information by authorizing the release of all relevant ~~information;~~information. The applicant shall incur the cost associated with this background investigation.

(2a) The Department of Justice may provide a criminal record check to the Commissioner for a person or agency who has applied for a license through the Commissioner. The Commissioner shall provide to the Department of Justice, along with the request, the fingerprints of all applicants, any additional information required by the Department of Justice, and a form signed by the applicants consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicants' fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Commissioner shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision.

(3) Upon completion of the investigation, or ~~30 days~~ 60 days after the application was received, whichever is later, but in no case more than ~~45 days~~ 75 days after the application was received, shall determine whether or not a license should be issued. The license shall be denied for any of the following reasons:

a. If the applicant for agency license, or the president or majority shareholder of a corporate applicant, omits or falsifies any material information asked for in the application and required by the ~~Commissioner;~~Commissioner.

b. If any owner, officer, director or manager of the employment agency:
   1. Has been convicted in any state of the criminal offense of embezzlement, obtaining money under false pretenses, forgery, conspiracy to defraud or any similar offense involving fraud or moral turpitude;
   2. Was an owner, officer, director or manager of an employment agency or other business whose license was revoked or that was otherwise caused to cease operation by action of any State or federal agency or court because of violations of law or regulation relating to deceptive or unfair practices in the conduct of business;
   3. As an owner or manager of an employment agency or other business or as an employment counselor was found by any State or federal agency or court to have violated any law or regulation relating to deceptive or unfair practices in the conduct of business; or
   4. In any other demonstrable way engaged in deceptive or unfair practices in the conduct of ~~business;~~business.

c. If the employment agency will be operated on the same premises as a loan agency (as defined in G.S. 105-88) or collection agency (as defined in G.S. 58-70-15).

(e) If it appears upon the hearing or from the inspection, examination or investigation made by the Commissioner that the owners, partners, corporation officers or the agency manager are not persons of good moral character or that the license applicant has not complied with the provisions of this Article, the application shall be denied and a license shall not be granted. The Commissioner shall find facts to substantiate his denial of the issuance of a license. Each application shall be granted or refused within ~~30 days~~ 60 days from the date of its filing, or if a hearing is held, within ~~45 days.~~75 days. Any license heretofore or hereafter issued shall expire 12 months from the date of its issuance, and shall be renewed as hereinafter provided unless sooner revoked by the Commissioner.

(f) No license shall be granted to a person to operate as a private personnel service where the name of the business is similar or identical to that of any existing licensed business (except where a franchiser has licensed two or more persons to use the same name within the State) or directly or indirectly expresses or connotes any limitation, specification or discrimination contrary to current State or federal laws against discrimination in employment.

(g) Every license shall contain the name of the person licensed and shall designate the city in which the license is issued, the name of the manager and date of the license. The license shall be displayed in a conspicuous place in the area where job applicants are received by the agency.

(h) A license granted as provided in this Article shall not be valid for any person other than the person to whom it is issued or for any place other than that designated in

the license and shall not be assigned or transferred without the consent of the Commissioner, whose consent must be based on the standards contained in this Article. Applications for consent to assign or transfer shall be made in the same manner as an application for a license, and all the provisions of this Article shall apply to applications for consent. The location of a private personnel service shall not be changed without notice to the Commissioner, and any change of location shall be endorsed upon the license. A person who has obtained a license in accordance with the provisions of this Article may apply for additional licenses to conduct additional private personnel services in accordance with the provisions of this Article. The manner of application, and the conditions and terms applicable to the issuance of the additional licenses shall be the same as for an original license. The same agency manager may be designated in all such licenses.

(i) Temporary license. – If ownership of a licensed private personnel service is transferred, the department shall issue a temporary license to any new owner or successor if it appears to the department that issuance of such a license would serve the public interest. A temporary license shall be effective for a period of 90 days and shall not be renewed.

(j) Each licensee shall, before the license is issued or renewed, deposit with the department a bond payable to the State of North Carolina and executed by a surety company duly authorized to transact business in the State of North Carolina in the amount of ten thousand dollars ($10,000) and upon condition that the private personnel service will pay to applicants all refunds due under this Article and regulations adopted hereunder if the private personnel service terminates its business."

SECTION 10. G.S. 95-47.7 is repealed.

SECTION 11. G.S. 95-47.8 is repealed.

SECTION 12. G.S. 95-47.9 reads as rewritten:

"**§ 95-47.9. Enforcement of Article; rules; hearing; penalty; criminal penalties.**

(a) This Article shall be enforced by the Commissioner. The Commissioner or any duly authorized agent, deputies or assistants designated by the Commissioner, may upon receipt of a complaint that a private personnel service has violated a specific section of this Article, inspect those records relevant to the complaint which this Article requires the private personnel service to retain. The Commissioner may also subpoena those records and witnesses and may conduct investigations of any employer or other person where the Commissioner has reasonable grounds for believing that the employer or person has conspired or is conspiring with a private personnel service to violate this Article.

(b) ~~The Commissioner may make reasonable administrative rules within the standards set in this Article. Before such rules are presented to the Advisory Council, the Commissioner shall conduct a public hearing, giving due notice thereof to all interested parties and shall afford the opportunity for written comments. No rule shall become effective until 60 days after the public hearing and Advisory Council approval, and copies thereof shall be furnished to all private personnel services at least 30 days prior to the effective date of the rule.~~The Commissioner shall adopt rules necessary to carry out and administer the provisions of this Article.

(c) Complaints against any licensed person shall be made in writing to the ~~Commissioner, or be sent in affidavit form without a personal appearance of the complainant.~~ Commissioner.

(1) If the complaint alleges a violation of this Article, the Commissioner shall cause an investigation to be made. If, as a result of the investigation, the Commissioner has reason to believe that a material violation of this Article has been committed by a private personnel service, the Commissioner ~~may hold a hearing. Reasonable notice thereof, not less than 10 days, shall be given in writing to the licensed person involved by serving upon him either personally, by registered or certified mail, or by leaving the same with the manager, a copy of the complaint. A hearing shall be held before the Commissioner with reasonable promptness but in no event later than 30 calendar days from the date of the filing of the complaint. The Commissioner, when investigating any matters pertaining to the granting, issuing, transferring, renewing, revoking, suspending or canceling of any license may take such testimony as he deems necessary on which to base official action. When taking such testimony he may subpoena witnesses and also direct the production before him of necessary and material books and papers. A daily calendar of all hearings shall be kept by the Commissioner and shall be posted in a conspicuous place in his public office for at least one day before the date of the hearings. The Commissioner shall render his decision within eight calendar days from the date of the completion of the hearing. The Commissioner shall keep a record of all such complaints and hearings.~~ may, after compliance with Chapter 150B of the General Statutes, deny, suspend, or revoke a license issued under this Article if it is determined that the licensee or any employee of the licensee is guilty of violating the provisions of this Article. In addition, the Commissioner may issue warnings or levy a fine against the private personnel service that shall not exceed two hundred fifty dollars ($250.00).

(2) The denial, revocation, or suspension of a license or the issuance of a warning or fine by the Commissioner shall be in writing, shall be signed by the Commissioner or the Commissioner's designee, and shall state the grounds upon which the decision is based. The aggrieved person shall have the right to appeal from the decision as provided by Chapter 150B of the General Statutes.

(d) ~~If at the hearing conducted pursuant to subsection (c) of this section, it has been shown that the private personnel service or any employee of that personnel service is guilty of violating the provisions of this Article, the Commissioner may issue warnings, or levy a fine against the personnel service which shall not exceed two hundred and fifty dollars ($250.00), and, for repeated willful violations, may suspend or revoke the license of the personnel service. Whenever the Commissioner suspends or revokes the license of any private personnel service, or levies a fine against a service,~~

~~the determination is subject to judicial review in proceedings brought pursuant to the Administrative Procedure Act.~~ Whenever a license is ~~revoked,~~ revoked pursuant to subsection (c) of this section, another license shall not be issued to the same person within three years from the date of the revocation. ~~The Commissioner, Deputy Commissioner, or Director, Private Personnel Service Division may conduct hearings and act upon applications for licenses, and may revoke or suspend such licenses, or levy fines.~~

(e) Any person who operates as a private personnel service without first obtaining the appropriate license (i) shall be guilty of a Class 1 misdemeanor; and (ii) be subject to a civil penalty of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00) for each day the private personnel service operates without a license, the penalty not to exceed a total of two thousand dollars ($2,000). Actions to recover civil penalties shall be initiated by the Attorney General. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 13. This act becomes effective July 1, 2003.

HOUSE BILL 1129:
2003 Omnibus Labor Law Changes.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Representatives Fox and West
Date:	June 5, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Second Edition		

SUMMARY: House Bill 1129 changes makes several changes in Chapter 95, the Labor statute, endorsed by the State Department of Labor, notably to allow notice by other kinds of carriers than mail, to abolish the Private Personnel Services Advisory Council, and to charge applicants for private personnel services licenses some of the cost of processing the licenses. Effective July 1, 2003.

Sections 1-7 – Amends several labor statutes to allow notice to be served, not only by certified mail, but also by a delivery service designated by the U.S. Secretary of the Treasury under the Internal Revenue Code. *26 U.S.C. § 7502(f)(2).* The Code authorizes the Secretary to designate any service that meets at least 3 criteria:

- Is available to the general public.
- Is at least as timely and reliable on a regular basis as the U.S. mail.
- Records electronically or on its cover the date on which the item to be delivered was given to the delivery service.

The General Assembly has adopted this U.S. Treasury-designated delivery in Rule 4 of the Rules of Civil Procedure.

Section 8 — Repeals G.S. 95-25.3A, which permitted an employer to pay an employee a "training wage" rather than the minimum wage between the dates of January 1, 1992, and April 1, 1993. The 1991 bill that enacted the statute did not contain an expiration date, so it is still on the books. But it hasn't applied to anyone for 10 years, and the Department of Labor felt it was causing confusion and should be repealed.

Section 9 — Amends the licensing statute for private personnel services to do 2 things:

- Charge the applicant for the newspaper notice the Department must take out and the background investigation the Department must make as part of processing each application.
- Gives the Department more time to process an application: 60 days after the application is received (rather than the current 30 days), or if the investigation takes longer than that, a maximum of 75 days (rather than the current 45).

Sections 10-11 – Abolishes the Private Personnel Service Advisory Council, a 12-member body charged with advising the Commissioner of Labor on the regulation of private personnel services and approving rules adopted by the Commissioner.

Section 12 — Amends G.S. 95-47.9, the enforcement statute for private personnel services, to adapt it to Chapter 150B, the Administrative Procedure Act, and to the absence of the Advisory Council.

This summary was substantially contributed to by Bill Gilkeson, Counsel to the House Occupational Safety Committee

H1129-SMRU-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1066
Committee Substitute Favorable 5/1/03

Short Title: Health Plans Disclose Fee Schedules/Coding. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO FACILITATE THE SUBMISSION OF COMPLETE CLAIMS BY PROVIDERS UNDER HEALTH BENEFIT PLANS BY REQUIRING HEALTH BENEFIT PLANS TO DISCLOSE TO CONTRACT PROVIDERS THE PLANS' SCHEDULES OF FEES AND CLAIMS SUBMISSION AND REIMBURSEMENT POLICIES, AND TO PROVIDE NOTICE TO THE PROVIDER PRIOR TO IMPLEMENTING CHANGES TO THE SCHEDULES OR POLICIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-225 is amended by adding the following new subsection to read:

"(n) In order to facilitate submission of complete claims by providers:

(1) Insurers shall make available to contracted health care providers the information listed in subdivision (2) of this subsection and shall provide to contracted health care providers advance notice of changes to the information listed in subdivision (2) of this subsection. Notice of a change in reimbursement policy shall be given at least 30 days prior to implementing the change. The notice period for a change in a schedule of fees shall be the contractual notice period, but in no event shall such notices be given less than 30 days prior to the change. If a provider contract does not include such a termination without cause provision, or if a contract requires mutual written consent prior to schedule of fees changes such notices shall be given not less than 30 days prior to the change. No advance notice must be provided for the information in subdivision (2)a. of this subsection if the change has the effect of increasing fees, expanding health benefit plan coverage, or is made for patient safety considerations, in which case such notification may be made concurrent with the change. Information may be made available in any medium selected by the insurer, including an electronic medium, and notice of change may also be provided in the

medium of the insurer's choosing. Advance notice may be made by communicating with contracted providers via an electronic mailing list or other electronic means.

(2) a. An insurer shall make available to contracted providers the following:

1. The insurer's schedule of fees associated with the top 30 services or procedures most commonly billed by that class of provider, and, upon request, the full fee schedule for services or procedures billed by that class of provider; and

2. In the case of a contract incorporating multiple classes of providers, the insurer's schedule of fees associated with the top 30 services or procedures most commonly billed for each class of provider, and, upon request, the full fee schedule for services or procedures billed for each class of provider; and

3. A description of the insurer's claim submission and reimbursement policies.

b. In a case where an insurer makes reference to source information that is the basis for fees or a reimbursement policy and that source information is outside of the control of the insurer, the insurer's clear identification of the source and information on how the provider may readily access the source information shall satisfy the requirement to make the fees or policy available.

(3) For providers offered a contract by an insurer, the insurer shall make available its schedule of fees associated with the top 30 services or procedures most commonly billed by that class of provider, and, upon request, the full fee schedule for services or procedures billed by that class of provider, or for each class of provider in the case of a contract incorporating multiple classes of providers.

(4) Nothing herein shall prevent an insurer from requiring that providers keep confidential, and not disclose to third parties, the fee information provided under this subsection.

(5) Providers shall submit claims in accordance with insurers' claim submission and reimbursement policies.

(6) As used in this subsection, the term 'schedule of fees' includes, if applicable, CPT, HCPCS, ICD-9-CM codes, modifiers, and other applicable codes for the procedures most commonly billed for that class of provider.

(7) As used in this subsection, the term reimbursement policy means information relating to payment and including the following as applicable:

a. Policies on claims bundling and other claims editing processes;

b. Policies on recognition or nonrecognition of CPT code modifiers;
c. Policies on downcoding of services or procedures;
d. Definitions of global surgery periods;
e. Policies on multiple surgical procedures; and
f. Policies related to payment based on the relationship of procedure code to diagnosis code.

(8) As used in this subsection, the term 'insurer' shall not include an insurance company, service corporation, health maintenance organization, or multiple employee welfare arrangement that writes stand alone dental insurance.

(9) Insurers' provider contracts shall indicate the availability of the information required to be provided under this subsection.

(10) Except for the notice of changes to schedules of fees in subdivision (1) and the information required to be provided in subdivision (2)a.1. of this subsection, this subsection does not apply to claims processed by an insurer on a claims adjudication system that was implemented prior to January 1, 1982, provided that the insurer:
a. Verifies with the Commissioner that its claims adjudication system qualified under this subsection; and
b. Is implementing a new claims adjudication software system as soon as possible and in any event no later than December 31, 2004. This subdivision (10) shall expire on January 1, 2005.

(11) Except for the notice of changes to schedules of fees in subdivision (1) of this subsection, this subsection does not apply to claims processed by the Teachers' and State Employees' Comprehensive Major Medical Plan until December 31, 2005. This subdivision shall expire January 1, 2006."

SECTION 2. G.S. 58-3-191(b) is amended by adding the following new subdivision to read:

"**§ 58-3-191. Managed care reporting and disclosure requirements.**

(a) Each health benefit plan shall annually, on or before the first day of March of each year, file in the office of the Commissioner the following information for the previous calendar year:

...

(6) Aggregate data on requests for schedules of fees and reimbursement policies from participating providers under G.S. 58-3-225(n) and the health benefit plans' responses to those requests."

SECTION 3. Subdivisions (2)a.1. and (2)a.2. of this subsection are effective when they become law for contracts issued, modified, or renewed after that date. The remainder of this act becomes effective January 1, 2004.

HOUSE BILL 270

Short Title:	Insurance Technical Corrections.-AB	(Public)
Sponsors:	Representative Setzer.	
Referred to:	Insurance.	

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE INSURANCE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. The introductory clause of Section 4 of S.L. 2002-144 reads as rewritten:

"**SECTION 4.** ~~G.S. 143-10(a)~~ G.S. 143-143.10(a) reads as rewritten:"

SECTION 2. G.S. 58-26-31(a) reads as rewritten:

"(a) Each domestic title insurance company shall withdraw from use funds to be used by the Commissioner in the event of the insurer's insolvency, the funds being equal to the statutory premium reserve and the supplemental reserve pursuant to G.S. 58-26-25. The amount shall be held in a trust account, as approved by the Commissioner. The trust account will be held in favor of the holders of title policies in the event of the insolvency of the ~~insurer.~~ insurer, and is not subject to G.S. 41-15. Nothing in this section precludes the insurer from investing the reserve in investments authorized by law for that insurer, and the income from the invested reserve shall be included in the general income of the insurer to be used by the insurer for any lawful purpose."

SECTION 3. G.S. 1-507.7 reads as rewritten:

"**§ 1-507.7. Report on claims to court; exceptions and jury trial.**

It is the duty of the receiver to report to the session of the superior court subsequent to a finding by him as to any claim against the corporation, and exceptions thereto may be filed by any person interested, within 10 days after notice of the finding by the receiver, and not later than within the first three days of the said term; and, if, on an exception so filed, a jury trial is demanded, it is the duty of the court to prepare a proper issue and submit it to a jury; and if the demand is not made in the exceptions to the report the right to a jury trial is waived. The judge may, in his discretion, extend the time for filing such exceptions. Provided, that no court shall issue any order of distribution or order of discharge of a receiver until said receiver has proved to the satisfaction of the court that written notice has been mailed to the last known address of

every claimant who has properly filed claim with the receiver, to the effect that such orders will be applied for at a certain time and place therein set forth and by producing a receipt issued by the United States post office, showing that such notice has been mailed to each of such claimant's last known address at least 20 days prior to the time set for hearing and passing upon such application to the court for said orders of distribution and/or discharge.

As to delinquency proceedings for insurance companies under Article ~~17A~~ 30 of General Statutes Chapter 58, such prior notice need be given only to those claimants whose presented claims have been denied or have not been adjudicated; and notice is satisfied by mailing either a general notice of application for distribution showing disposition of the claims or a copy of the application to such claimants. Proof of mailing with the United States Postal Service may be made by the receiver's certificate of service without either the necessity of postal receipt or the listing of individual claimants names and addresses."

SECTION 4. G.S. 1-339.1(8) reads as rewritten:

"(8) A sale made in the course of liquidation of an insurance company pursuant to Article ~~17A~~ 30 of Chapter 58 of the General Statutes, or".

SECTION 5. G.S. 58-33-133(c) reads as rewritten:

"(c) Fees collected by the Commissioner under this section shall be credited to the ~~Department of~~ Insurance Regulatory Fund created under G.S. 58-6-25."

SECTION 6. G.S. 143-138(g) reads as rewritten:

"(g) **(Effective until June 30, 2003)** Publication and Distribution of Code. – The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	1
Attorney General (Library)	1
Commissioner of Agriculture	1
Commissioner of Labor	1
Commissioner of Insurance	1
Department of Environment and Natural Resources	1
Department of Health and Human Services	1
Department of Juvenile Justice and Delinquency Prevention	1

Board of Transportation 1
Utilities Commission 1
Department of Administration 1
Clerk of the Supreme Court 1
Clerk of the Court of Appeals 1
Department of Cultural Resources [State Library] 1
Supreme Court Library 1
Legislative Library 1
Office of Administrative Hearings 1
Rules Review Commission 1
Schools
All state-supported colleges and universities in the State of North Carolina ..... *1 each
Local Officials
Clerks of the Superior Courts ..... 1 each
Chief Building Inspector of each incorporated municipality or county 1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public. The proceeds from sales of the Building Code shall be credited to the ~~Department of~~ Insurance Regulatory Fund under G.S. 58-6-25."

SECTION 7. G.S. 58-69-40 reads as rewritten:

"**§ 58-69-40. Disposition of fees.**

All fees collected by the Commissioner under this Article shall be credited to the ~~Department of~~ Insurance Regulatory Fund created under G.S. 58-6-25."

SECTION 8. G.S. 58-70-45 reads as rewritten:

"**§ 58-70-45. Disposition of permit fees.**

All permit fees collected under this Article shall be credited to the ~~Department of~~ Insurance Regulatory Fund created under G.S. 58-6-25."

SECTION 9. G.S. 58-71-180 reads as rewritten:

"**§ 58-71-180. Disposition of fees.**

Fees collected by the Commissioner pursuant to this Article shall be credited to the ~~Department of~~ Insurance Regulatory Fund created under G.S. 58-6-25."

SECTION 10. G.S. 143-151.21 reads as rewritten:

"**§ 143-151.21. Disposition of fees.**

Fees collected by the Commissioner under this Article shall be credited to the ~~Department of~~ Insurance Regulatory Fund created under G.S. 58-6-25."

SECTION 11. G.S. 58-85-30 reads as rewritten:

"**§ 58-85-30. Treasurer to pay fund to Volunteer Firemen's Association.**

(a) The treasurer of the North Carolina State Firemen's Association shall pay to the treasurer of the North Carolina State Volunteer Firemen's Association one sixth of the funds arising from the ~~five percent (5%)~~ three percent (3%) paid ~~him~~ the treasurer of the North Carolina State Firemen's Association by the ~~Insurance~~ Commissioner each

year to be used by ~~said~~ the North Carolina State Volunteer Firemen's Association for the purposes set forth in G.S. 58-84-35.

(b) Local units of the North Carolina State Volunteer Firemen's Association shall maintain records and report to the North Carolina State Firemen's Association in ~~the same manner and to the same extent as provided for in~~ accordance with G.S. 58-84-40, and shall be subject to the sanctions ~~as set forth therein.~~ in G.S. 58-84-40."

SECTION 12. G.S. 58-51-80(c) reads as rewritten:

"(c) The term "employees" as used in this section shall be deemed to include, for the purposes of insurance hereunder, employees of a single employer, the officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. ~~Employees~~ With the exception of disability income insurance, employees shall be added to the group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term "employee" is defined as a nonseasonal person who works on a full-time basis, with a normal work week of 30 or more hours and who is otherwise eligible for coverage, but does not include a person who works on a part-time, temporary, or substitute basis. The term "employer" as used herein may be deemed to include the State of North Carolina, any county, municipality or corporation, or the proper officers, as such, of any unincorporated municipality or any department or subdivision of the State, county, such corporation, or municipality determined by conditions pertaining to the employment."

SECTION 13. G.S. 58-33-83 reads as rewritten:

"**§ 58-33-83. Assumed names.**

An insurance producer doing business under any name other than the producer's legal name shall notify the ~~Commission~~ Commissioner before using the assumed name."

SECTION 14. G.S. 58-30-200(c) reads as rewritten:

"(c) The liquidator shall make his recommendations to the Court under ~~G.S. 58-30-125,~~ G.S. 58-30-225 for the allowance of an insured's claim under subsection (b) of this section after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the Court, the liquidator shall withhold any dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, he shall reconsider the claim on the basis of additional information and amend his recommendations to the Court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The Court may amend its allowance as it thinks appropriate. As claims against the insured are settled or barred, the insured shall be paid from the amount withheld the same percentage dividend as was paid on other claims of like property, based on the lesser of (i) the amount actually recovered from the insured by action or

paid by agreement plus the reasonable costs and expense of defense, or (ii) the amount allowed on the claims by the Court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed assets of the insurer. Delay in final payment under this subsection shall not be a reason for unreasonable delay of final distribution and discharge of the liquidator."

SECTION 15. G.S. 97-195(b)(4) is repealed.

SECTION 16. This act is effective when it becomes law.

HOUSE BILL 270:
Insurance Technical Changes/AB

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Representative Setzer
Date:	June 5, 2003	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 270 makes various technical changes and corrections to the laws governing insurance.

Section 1 of the bill amends S.L. 2002-144 (HB 1105-Insurance Regulatory Fund Changes) to correct the introductory clause. The clause incorrectly reads "G.S. 143-10(a) reads as rewritten." The correct statute is G.S. 143-143.10(a).

Section 2 of the bill clarifies G.S. 58-26-31. This statute creates a trust account from premium reserves of real estate title companies to be held in favor of title policy holders in case of insolvency. **Section 2** provides that this trust account is **not** subject to the statutory rule against perpetuities as provided in G.S. 41-15.

The rule against perpetuities provides that a nonvested property interest (such as the trust account) is invalid unless, at the time of creation, it is certain to vest or terminate no later than 21 years after the death of an individual then alive, or terminates within 90 years of creation.

Sections 3 and 4 of the bill delete references to Article 17A of Chapter 58 of the General Statutes, which formerly governed insurance supervision, rehabilitation and changes these references to Article 30. Article 17 has been repealed. Article 30 is the current article governing insurance supervision, rehabilitation, and liquidation.

Sections 5 through 10 replace various statutory references to the "Department of Insurance Fund" with the fund's correct name, the "Insurance Regulatory Fund."

Section 11 corrects a reference to the percentage of funds to be paid by the Commissioner of Insurance to the North Carolina State Firemen's Association. G.S. 58-85-30 incorrectly refers to a percentage of 5% of the fire tax to be remitted by the Commissioner of Insurance to the Firemen's Association (of which an amount is forwarded to the Volunteer Firemen's Association). G.S. 58-84-25 directs the Commissioner to remit, not 5%, but 3% of the tax.

Section 12 clarifies that the 90-day deadline for adding employees to group accident and health insurance coverage does not apply to disability income insurance.

Section 13 corrects an incorrect reference to "Commission" in G.S. 58-33-83. The word should be "Commissioner."

Section 14 corrects a reference in Article 30 of Chapter 58 governing recommendations to a court upon liquidation of an insurer. G.S. 58-30-200, Special provisions for third party claims, incorrectly refers to G.S. 58-30-125, Notice to creditors and others. This reference should be to G.S. 58-30-225, Liquidator's recommendations to the court.

Section 15 repeals G.S. 97-195(b)(4). This subsection authorizes the revocation of a workers compensation license if a self-insurer fails to pay the maintenance fund tax under G.S.97-100(j). The maintenance fund tax was repealed in 1995 (S.L. 1995-360).

EFFECTIVE DATE: House Bill 270 is effective when it becomes law.

This summary was contributed to by the N.C. Department of Insurance.

HOUSE BILL 270 – INSURANCE TECHNICAL CORRECTIONS/AB
Section-by-Section Bill Summary

Section 1. Corrects an erroneous statutory reference in S.L. 2002-144 (HB 1105 – Insurance Regulatory Fund Changes. Section 4 of the bill incorrectly stated that "G.S. 143-10(a) reads as rewritten" in making changes regarding fees collected by the North Carolina Manufactured Housing Board. The amended statute should have been G.S. 143-143.10(a). This corrects it.

Section 2. Clarifies that, under the newly created G.S. 58-26-31, which requires premium reserves of real estate title insurance companies be held in trust to protect title policyholders in case of insolvency, the trust account is not subject to the statutory rule against perpetuities, which invalidates property interests that do not vest within certain time periods.

Sections 3. and 4. Corrects an antiquated reference to Article 17A the former article in Chapter 58 governing insurer supervision, rehabilitation and liquidation. This section changes the reference to Article 30, the current article governing insurer supervision, rehabilitation and liquidation.

Sections 5. through 10. Corrects various references to "the Department of Insurance Fund" under G.S. 58-6-25 to reflect its current name "the Insurance Regulatory Fund".

Section 11. Corrects an inconsistency in percentages used for funding the North Carolina State Volunteer Firemen's Association. G.S. 58-84-25 directs the Commissioner of Insurance to remit 3% of the fire tax (imposed pursuant to G.S. 105-228.5(d)(4) to the treasurer of the State Firemen's Association. G.S. 58-85-30 incorrectly refers to this remittance as 5%. This section corrects this inconsistent percentage to reflect "3% ". This section also amends 58-85-30: by deleting the unnecessary word "Insurance" before "Commissioner", clarifying to which treasurer the 3% is remitted, rewording for clarity and brevity, and organizing the statute into two subsections.

Section 12. Clarifies that, under G.S. 58-51-80, which defines group accident and health insurance and establishes limitations on those policies, the requirement that the 90 day deadline for adding employees to group coverage does not apply with regards to disability income coverage.

Section 13. Corrects an incorrect reference to "Commission" in G.S. 58-33-83 to make it "Commissioner".

Section 14. Corrects an incorrect reference in 58-30-200. The reference, which is to the recommendations to the Court by the liquidator, incorrectly cites G.S. 58-30-125 (Notice to creditors and others). The corrected reference is to G.S. 58-30-225 (Liquidator's recommendations to the Court.)

Section 15. Repeals G.S. 97-195(b)(4) as a basis for revocation of a workers' compensation license because it cites as a basis for revocation the failure of a self-insurer to pay the maintenance fund tax ("assessment under G.S. 97-100" – specifically 97-100(j)). This maintenance fund tax provision G.S. 97-100(j) was repealed in 1995 by S.L. 1995-360, s.1.

Section 16. Makes the act effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 550*

Short Title:	Crematory Act Changes.	(Public)
Sponsors:	Senator Hagan.	
Referred to:	Commerce.	

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO IMPROVE AND STRENGTHEN CREMATION LAW IN NORTH CAROLINA AND TO IMPROVE AND MAKE TECHNICAL CORRECTIONS TO THE FUNERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. The name of the North Carolina Board of Mortuary Science is changed to the North Carolina Board of Funeral Service.

SECTION 2. Article 13C of Chapter 130A reads as rewritten:

"Article 13C.

"Cremations.

"§ 90-210.40. Short title.

This Article shall be known and may be cited as the North Carolina Crematory Act.

"§ 90-210.41. Definitions.

As used in this Article, unless the context requires otherwise:

~~(1) "Authorizing agent" means a person legally entitled to order, or carry out the legal order for, the cremation of human remains. In the case of indigents or any other individuals whose final disposition is the responsibility of the State, a public official charged with arranging the final disposition of the deceased, if legally authorized, may serve as the authorizing agent. In the case of individuals whose death occurred in a nursing home or other private institution, and in which the institution is charged with making arrangements for the final disposition of the deceased, a representative of the institution, if legally authorized, may serve as the authorizing agent.~~

~~(2) "Board" means the North Carolina State Board of Mortuary Science.~~

~~(3) Repealed by Session Laws 1997-399, s. 16.~~

~~(4) "Closed container" means any container in which cremated remains can be placed and closed in a manner so as to prevent leakage or spillage of cremated remains or the entrance of foreign material.~~

~~(5) "Cremated remains" means all human remains recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions.~~

~~(6) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments.~~

~~(7) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers covered by this Article shall be used exclusively for the cremation of human remains.~~

~~(8) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet all of the standards established by the rules adopted by the Board.~~

~~(9) "Crematory" means the building or portion of a building that houses the cremation chamber and that may house the holding facility, business office or other part of the crematory business. A crematory must comply with any applicable public health laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board.~~

~~(10) "Crematory authority" means the North Carolina Crematory Authority.~~

~~(11) "Crematory operator" means the legal entity which is licensed by the Board to operate a crematory and perform cremations.~~

~~(12) Repealed by Session Laws 1997-399, s. 16.~~

~~(13) "Human remains" means the body of a deceased person, including a human fetus, regardless of the length of gestation, or part of a body that has been removed from a living or deceased person.~~

~~(14) "Niche" means a compartment or cubicle for the memorialization or permanent placement of an urn containing cremated remains.~~

(1) 'Authorizing agent' means a person legally entitled to authorize the cremation of human remains in accordance with G.S. 90-210.44.

(2) 'Board' means the North Carolina Board of Funeral Service.

(3) 'Body parts' means limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or human bodies or any portion thereof that have been donated to science for medical purposes.

(4) 'Casket' means a rigid container that is designed for the encasement of human remains and that is usually constructed of wood, metal, or other material and ornamented and lined with fabric, and which may or may not be combustible.

(5) 'Certificate of cremation' means a certificate provided by the crematory manager who performed the cremation containing, at a minimum, the following information:

a. Name of decedent;

b. Date of cremation;

c. Name and address of crematory; and
d. Signature of crematory manager or person acting as crematory manager.

(6) 'Cremated remains' means all human remains recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions.

(7) 'Cremation' means the technical process, using intense heat and flame, that reduces human remains to bone fragments. Cremation includes the processing and may include the pulverization of the bone fragments.

(8) 'Cremation chamber' means the enclosed space within which the cremation process takes place. Cremation chambers covered by this Article shall be used exclusively for the cremation of human remains.

(9) 'Cremation container' means the container in which the human remains are transported to the crematory or placed therein upon arrival for storage and placement in a cremation chamber for cremation. A cremation container shall comply with all of the following standards:

a. Be composed of readily combustible materials suitable for cremation;
b. Be able to be closed in order to provide a complete covering for the human remains;
c. Be resistant to leakage or spillage;
d. Be rigid enough for handling with ease;
e. Be able to provide protection for the health, safety, and personal integrity of crematory personnel; and
f. Be easily identifiable. The covering of the cremation container shall contain the following information:
1. The name of the decedent:
2. The date of death;
3. The sex of the decedent; and
4. The age at death of the decedent.

(10) 'Cremation interment container' means a rigid outer container composed of concrete, steel, fiberglass, or some similar material in which an urn is placed prior to being interred in the ground and which is designed to withstand prolonged exposure to the elements and to support the earth above the urn.

(11) 'Crematory' or 'crematorium' means the building or buildings or portion of a building on a single site that houses the cremation equipment, the holding and processing facilities, the business office, and other parts of the crematory business. A crematory must comply with all applicable public health and environmental laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board.

(12) 'Crematory licensee' means the individual or legal entity that is licensed by the Board to operate a crematory and perform cremations.

(13) 'Crematory manager' means the person who is responsible for the management and operation of the crematory. A crematory manager must be licensed to practice funeral directing or funeral service and must also be qualified as a crematory technician. Notwithstanding any other provision of law, a crematory that is licensed by the Board prior to January 1, 2004, and as of that date is not managed by a crematory manager who is licensed to practice funeral directing or funeral service, may continue to be managed by a crematory manager who is not licensed to practice funeral directing or funeral service so long as there is no sale, transfer, devise, bequest, gift, or any other disposal of a controlling interest in the crematory and the crematory does not arrange cremations directly with the public.

(14) 'Crematory technician' means any employee of a crematory licensee who has a certificate confirming that the crematory technician has attended a training course approved by the Board.

(15) 'Final disposition' means the cremation and the ultimate interment, entombment, inurnment, or scattering of the cremated remains or the return of the cremated remains by the crematory licensee to the authorizing agent or such agent's designee as provided in this Article. Upon the written direction of the authorizing agent, cremated remains may take various forms.

(16) 'Holding and processing facility' means an area or areas that are designated for the retention of human remains prior to, and the retention and processing of cremated remains after, cremation; that comply with all applicable public health and environmental laws; preserve the health and safety of the crematory technician and other personnel of the crematory; and that are secure from access by anyone other than authorized persons. A holding facility and processing facility must be located in a crematory.

(17) 'Human remains' means the body of a deceased person, including a separate human fetus, regardless of the length of gestation, or body parts.

(18) 'Niche' means a compartment or cubicle for the memorialization or final disposition of an urn or container containing cremated remains.

(19) 'Processing' means the removal of bone fragments from the cremation chamber for the reduction in size, labeling and packaging, and placing in an urn or temporary container.

(20) 'Pulverization' means the reduction of identifiable or unidentifiable bone fragments after the completion of the cremation to granulated particles by mechanical means.

(21) 'Scattering area' means an area permitted by North Carolina law including, but not limited to, an area designated by a cemetery and located on dedicated cemetery property where cremated remains that

have been removed from their container can be mixed with or placed on top of the soil or ground cover.

(22) 'Temporary container' means a receptacle for cremated remains, usually composed of cardboard, plastic, or similar material which can be closed in a manner so as to prevent the leakage or spillage of the cremated remains or the entrance of foreign material and which is a single container of sufficient size to hold the cremated remains until an urn is acquired or the cremated remains are scattered.

(23) 'Urn' means a receptacle designed to permanently encase the cremated remains.

"**§ 90-210.42. Crematory Authority established.**

(a) The North Carolina Crematory Authority is established as a Committee within the Board. The Crematory Authority shall suggest rules to the Board for the carrying out and enforcement of the provisions of this Article.

(b) The Crematory Authority shall initially consist of five members appointed by the Governor and two members of the Board appointed by the Board. The Governor may consider a list of recommendations from the Cremation Association of North Carolina.

(c) The initial terms of the members of the Crematory Authority shall be staggered by the appointing authorities so that the terms of three members (two of which shall be appointees of the Governor) expire December 31, 1991, the terms of two members (both of which shall be appointees of the Governor) expire December 31, 1992, and the terms of the remaining two members (one of which shall be an appointee of the Governor) expire December 31, 1993.

As the terms of the members appointed by the Governor expire, their successors shall be elected from among a list of nominees in an election conducted by the Board in which all licensed crematory operators are eligible to vote. The Board may conduct the election for members of the Crematory Authority simultaneously with the election for members of the Board or at any other time. The Board shall prescribe the procedures and establish the time and date for nominations and elections to the Crematory Authority. A nominee who receives a majority of the votes cast shall be declared elected. The Board shall appoint the successors to the two positions for which it makes initial appointments pursuant to this section.

The terms of the elected members of the Crematory Authority shall be three years. The terms of the members appointed by the Board, including the members initially appointed pursuant to this subsection, shall be coterminous with their terms on the Board. Any vacancy occurring in an elective seat shall be filled for the unexpired term by majority vote of the remaining members of the Crematory Authority. Any vacancy occurring in a seat appointed by the Governor shall be filled by the Governor. Any vacancy occurring in a seat appointed by the Board shall be filled by the Board.

(d) The members of the Crematory Authority shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 93B-5 for all time actually spent upon the business of the Crematory Authority. All expenses, salaries and per diem provided for in this Article shall be paid from funds

received ~~under the provisions of this Article and Article 13A~~ and shall in no manner be an expense to the State.

(e) The Crematory Authority shall select from its members a chairman, a vice chairman and a secretary who shall serve for one year or until their successors are elected and qualified. No two offices may be held by the same person. The Crematory Authority, with the concurrence of the Board, shall have the authority to engage adequate staff as deemed necessary to perform its duties.

(f) The Crematory Authority shall hold at least one meeting in each year. In addition, the Crematory Authority may meet as often as the proper and efficient discharge of its duties shall require. ~~Five~~ Three members shall constitute a quorum.

"§ 90-210.43. Licensing and inspection.

~~(a) Any person doing business in this State, or any cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity may erect, maintain and conduct a crematory in this State and may provide the necessary appliances and facilities for the cremation of human remains, provided that such person has secured a license as a crematory operator in accordance with the provisions of this Article.~~

~~(b) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment that is zoned commercial or industrial, or at any other location consistent with local zoning regulations.~~

~~(c) Application for a license as a crematory operator shall be made on forms furnished and prescribed by the Board. The Board shall examine the premises and structure to be used as a crematory and shall issue a renewable license to the crematory operator if the applicant meets all the requirements and standards of the Board and the requirements of this Article.~~

~~(d) Every application for licensure shall identify the individual who is responsible for overseeing the management and operation of the crematory. The crematory operator shall keep the Board informed at all times of the name and address of the manager.~~

~~(d1) All licenses shall expire on the last day of December of each year. A license may be renewed without paying a late fee on or before the first day of February immediately following expiration. After that date, a license may be renewed by paying a late fee as provided in G.S. 90-210.48 in addition to the annual renewal fee. Licenses that remain expired six months or more require a new application for renewal. Licenses are not transferable. A new application for a license shall be made to the Board within 30 days following a change of ownership of more than fifty percent (50%) of the business.~~

~~(e) No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and under the limitations provided in this Article, or unless otherwise permitted by statute.~~

~~(f) Whenever the Board finds that an owner, partner, manager, member, or officer of a crematory operator or an applicant to become a crematory operator, or that any agent or employee of a crematory operator or an applicant to become a crematory~~

~~operator, with the direct or implied permission of such owner, partner, manager, member, or officer, has violated any provision of this Article, or is guilty of any of the following acts, and when the Board also finds that the crematory operator or applicant has thereby become unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license, in accordance with the procedures of Chapter 150B:~~

~~(1) Conviction of a felony or a crime involving fraud or moral turpitude.~~

~~(2) Fraud or misrepresentation in obtaining or renewing a license or in the practice of cremation.~~

~~(3) False or misleading advertising.~~

~~(4) Gross immorality, including being under the influence of alcohol or drugs while performing cremation services.~~

~~(5) Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been cremated or otherwise disposed of.~~

~~(6) Violating or cooperating with others to violate any of the provisions of this Article or of the rules of the Board.~~

~~(7) Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies.~~

~~(8) Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully entitled to the custody thereof, except as provided in G.S. 90-210.47(e).~~

~~(9) Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.~~

~~In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000).~~

~~(g) The Board and Crematory Authority may hold hearings in accordance with the provisions of this Article and Chapter 150B. Any such hearing shall be conducted jointly by the Board and the Crematory Authority. The Board and the Crematory Authority shall jointly constitute an "agency" under Article 3A of Chapter 150B of the General Statutes with respect to proceedings initiated pursuant to this Article. The Board is empowered to regulate and inspect crematories and crematory operators and to enforce as provided by law the provisions of this Article and the rules adopted hereunder. Any crematory that, upon inspection, is found not to meet any of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain whether the deficiency or other violation has been corrected.~~

~~In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any~~

~~hearing, investigation or proceeding conducted by it or conducted jointly with the Crematory Authority. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the President of the Board for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor.~~

(a) Any person doing business in this State, or any cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization, or any other entity may erect, maintain, and operate a crematory in this State and may provide the necessary employees, facilities, structure, and equipment for the cremation of human remains, provided that the person or entity has secured a license as a crematory licensee in accordance with this Article.

(b) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment that is zoned commercial or industrial, or at any other location consistent with local zoning and environmental regulations.

(c) Application for a license as a crematory licensee shall be made on forms furnished and prescribed by the Board. The Board shall inspect the premises, facilities, structure, and equipment to be used as a crematory, confirm that the crematory manager's and crematory technician's educational certificate is valid, and issue a renewable license to the crematory licensee if the applicant meets all the requirements and standards of the Board and the requirements of this Article.

(d) Every application for licensure shall identify the crematory manager and all crematory technicians employed by the crematory licensee providing that nothing in this Article shall prohibit the designation and identification by the crematory licensee of one individual to serve as a crematory manager and crematory technician. Each crematory licensed in North Carolina shall employ on a full-time basis at least one crematory technician. Every application for licensure and renewal thereof shall include all crematory technicians' educational certificates. The crematory licensee shall keep the Board informed at all times of the names and addresses of the crematory manager and all crematory technicians. In the event a licensee is in the process of replacing its only crematory technician at the time of license renewal, the licensee may continue to operate the crematory for a reasonable time period not to exceed 180 days.

(e) All licenses shall expire on the last day of December of each year. A license may be renewed without paying a late fee on or before the first day of February immediately following expiration. After that date, a license may be renewed by paying a late fee as provided in G.S. 90-210.52 in addition to the annual renewal fee. Licenses that remain expired six months or more require a new application for renewal. Licenses are not transferable. A new application for a license shall be made to the Board within 30 days following a change of ownership of more than fifty percent (50%) of the business.

(f) No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization, or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and operated by a crematory

licensee subject to the restrictions and limitations of this Article or unless otherwise permitted by statute.

(g) Whenever the Board finds that an owner, partner, crematory manager, member, officer, or any crematory technician of a crematory licensee or any applicant to become a crematory licensee, or that any authorized employee, agent, or representative has violated any provision of this Article, or is guilty of any of the following acts, and when the Board also finds that the crematory operator or applicant has thereby become unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license, in accordance with Chapter 150B of the General Statutes:

(1) Conviction of a felony or a crime involving fraud or moral turpitude.

(2) Fraud or misrepresentation in obtaining or renewing a license or in the practice of cremation.

(3) False or misleading advertising.

(4) Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this paragraph shall not be construed to prohibit general advertising by the licensee.

(5) Employment directly or indirectly of any agent, assistant, or other person on a part-time or full-time basis or on commission for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee.

(6) The direct or indirect payment or offer of payment of a commission by the licensee or the licensee's agent, assistant, or employees for the purpose of securing business.

(7) Gross immorality, including being under the influence of alcohol or drugs while performing cremation services.

(8) Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material published or caused to be published by the licensee.

(9) Failing to treat a dead human body with respect at all times.

(10) Violating or cooperating with others to violate any of the provisions of this Article or of the rules of the Board.

(11) Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of dead human bodies.

(12) Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully entitled to the custody thereof, except as provided in G.S. 90-210.51(e).

(13) Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

(14) Practicing funeral directing, embalming, or funeral service without a license.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than five thousand dollars ($5,000).

(h) Where the Board finds a licensee is guilty of one or more of the acts or omissions listed in subsection (g) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150B of the General Statutes. In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand ($5,000) in conjunction with the probation.

(i) The Board may hold hearings in accordance with the provisions of this Article and Chapter 150B of the General Statutes. The Board shall conduct any such hearing. The Board shall constitute an "agency" under Article 3A of Chapter 150B of the General Statutes with respect to proceedings initiated pursuant to this Article. The Board is empowered to regulate and inspect crematories and crematory licensees and to enforce as provided by law the provisions of this Article and the rules adopted hereunder. Any crematory that, upon inspection, is found not to meet any of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain whether the deficiency or other violation has been corrected.

In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation, or proceeding conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas, and other papers given to them by the President of the Board for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor.

"**§ 90-210.44. Authorizing agent.**

(a) The following person, in the priority list below, shall have the right to serve as an "authorizing agent":

(1) An individual at least 18 years of age may authorize the cremation and disposition of the individual's own dead body in a written will, pursuant to health care power of attorney to the extent provided in Article 3 of Chapter 32 of the General Statues, pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old. When an individual has authorized his or her own cremation and disposition in accordance

with this subsection, the individual or institution designated by that individual shall act as the authorizing agent for that individual.

(2) If a decedent has left no written authorization for the cremation and disposition of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, cremation, and disposition of the decedent's body:

(a) The surviving spouse.

(b) A majority of the surviving children who are at least 18 years of age and can be located after reasonable efforts.

(c) The surviving parents.

(d) A majority of the surviving siblings who are at least 18 years of age and can be located after reasonable efforts.

(e) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate who are at least 18 years of age and can be located after reasonable efforts.

(f) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the cremation and disposition.

(g) In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent may served as the authorizing agent.

(h) In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with making arrangements for the final disposition of the decedent, a representative of such institution may serve as the authorizing agent in the absence of any of the above.

(i) In the absence of any of the above, any person willing to assume responsibility as authorizing agent, as specified in this act.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63.

(b) A person who does not exercise his or her right to dispose of the decedent's body under subdivision (a)(2) of this section within five days of notification or 10 days from date of death, whichever is earlier, shall be deemed to have waived his or her right to authorize disposition of the decedent's body.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the cremation and disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the cremation and disposition, a person listed in subdivision (a)(2) of this section may authorize the cremation and disposition as if the individual were deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes.

"**§ 90-210.45. Authorization to cremate.**

(a) A crematory licensee shall not cremate human remains until it has received a cremation authorization form signed by an authorizing agent. The cremation authorization form shall be prescribed by the Board and shall contain at a minimum the following information:

(1) The identity of the human remains and confirmation that the human remains are in fact the individual so named.

(2) The time and date of death of the decedent.

(3) The name and address of the funeral establishment and/or the funeral director that obtained the cremation authorization.

(4) The name and address of the crematory to be in receipt of the human remains for the purpose of cremation.

(5) The name and address of the authorizing agent, the relationship between the authorizing agent and the decedent, and the date and time of signature of the authorizing agent.

(6) A representation that the authorizing agent does in fact have the right to authorize the cremation of the decedent and that the authorizing agent is not aware of any living person who has a superior priority right to that of the authorizing agent, as set forth in G.S. 90-210.44. Or, in the event that there is another living person who does have a superior priority right to that of the authorizing agent, a representation that the authorizing agent has made all reasonable efforts to contact such person, has been unable to do so, and that the authorizing agent has no reason to believe that such person would object to the cremation of the decedent.

(7) A representation that the authorizing agent has either disclosed the location of all living persons with an equal right to that of the authorizing agent, as set forth in G.S. 90-201.44, or does not know the location of any other living person with an equal right to that of the authorizing agent.

(8) Authorization for the crematory to cremate the human remains, including authorization to process or pulverize the cremated remains.

(9) A representation that the human remains do not contain a pacemaker or any other material or implant that may be potentially hazardous to the person performing the cremation.

(10) The name of the person authorized to receive the cremated remains from the crematory licensee.

(11) The manner in which final disposition of the cremated remains is to take place, if known. If the cremation authorization form does not specify final disposition in a grave, crypt, niche, or scattering area, then the form shall indicate that the cremated remains will be held by the crematory licensee for 30 days before they are disposed of, unless they are received from the crematory licensee prior to that time, in person, by the authorizing agent or his designee.

(12) The signature of the authorizing agent attesting to the accuracy of all representations contained on the cremation authorization form, except as set forth in subsection (b) of this section.

(13) If a cremation authorization form is being executed on a preneed basis, the cremation authorization form shall contain the disclosure required by G.S. 90-210.46. The authorizing agent may specify in writing religious practices that conflict with provisions in this statute. The crematory licensee and funeral director shall observe those religious practices except where they interfere with cremation in a licensed crematory as specified under G.S. 90-210.43 or the required documentation and record keeping.

(14) A licensed funeral director of the funeral establishment or crematory licensee that received the cremation authorization form shall also sign the cremation authorization form. Such individual shall not be responsible for any of the representations made by the authorizing agent, unless such individual has actual knowledge to the contrary, except for the information requested by subdivisions (a)(1), (2), (3), (4), and (9) of this section, which shall be considered to be representations of the individual. In addition, the funeral director shall warrant to the crematory that the human remains delivered to the crematory licensee are the human remains identified on the cremation authorization form with any other documentation required by this State, any county, or any municipality.

(b) An authorizing agent who signs a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth on the cremation authorization form, including that person's authority to order the cremation; except for the information required by subdivisions (a)(4) and (9) of this section, unless the authorizing agent has actual knowledge to the contrary. An authorizing agent signing a cremation authorization form shall be personally and individually liable for all damages occasioned thereby and resulting therefrom.

(c) A crematory licensee shall have the legal right to cremate human remains upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability for a crematory licensee that cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization, except for such crematory licensee's gross negligence,

provided that the crematory licensee performs such functions in compliance with the provisions of this Article.

(d) After the authorizing agent has executed a cremation authorization form and prior to the commencement of the cremation, the authorizing agent may revoke the authorization and instruct the crematory licensee to cancel the cremation and to release or deliver the human remains to another crematory licensee or funeral establishment. Such instructions shall be provided to the crematory licensee in writing. A crematory licensee shall honor any instructions given to it by an authorizing agent under this section, provided that it receives such instructions prior to commencement of the cremation of the human remains.

"**§ 90-210.46. Preneed cremation arrangements.**

(a) Any person, on a preneed basis, may authorize the person's own cremation and the final disposition of the person's cremated remains by executing, as the authorizing agent, a cremation authorization form on a preneed basis and having the form signed by two witnesses. The person shall retain a copy of this form, and a copy shall be sent to the funeral establishment and/or the crematory licensee. Any person shall have the right to transfer or cancel this authorization at any time prior to the person's death, by destroying the executed cremation authorization form and providing written notice to the party or parties that received the cremation authorization form.

(b) Any cremation authorization form executed by an individual as the individual's own authorizing agent on a preneed basis shall contain the following disclosure, which shall be completed by the authorizing agent:

/ / I do not wish to allow any of my survivors the option of canceling my cremation and selecting alternative arrangements, regardless of whether my survivors deem such a change to be appropriate.

/ / I wish to allow only the survivors whom I have designated below the option of canceling my cremation and selecting alternative arrangements or continuing to honor my wishes for cremation and purchasing services and merchandise, if they deem such a change to be appropriate.

(c) Except as provided in subsection (b) of this section, at the time of the death of a person who has executed, as the authorizing agent, a cremation authorization form on a preneed basis, any person in possession of the executed form, and any person charged with making arrangements for the disposition of the decedent's human remains who has knowledge of the existence of the executed form, shall use the person's best efforts to ensure that the decedent's human remains are cremated and that the final disposition of the cremated remains is in accordance with the instructions contained on the cremation authorization form.

(d) If a crematory licensee is in possession of a completed cremation authorization form, executed on a preneed basis, and the crematory licensee is in possession of the designated human remains, then the crematory licensee shall be required to cremate the human remains and dispose of the human remains according to the instructions contained on the cremation authorization form. A crematory licensee

that complies with the preneed cremation authorization form under these circumstances may do so without any liability.

(e) Any preneed contract sold by, or preneed arrangements made with a funeral establishment, that includes a cremation shall specify the final disposition of the cremated remains, pursuant to G.S. 90-210.50. In the event that no different or inconsistent instructions are provided to the crematory licensee by the authorizing agent at the time of death, the crematory licensee shall be authorized to release or dispose of the cremated remains as indicated in the preneed agreement. Upon compliance with the terms of the preneed agreement, the crematory licensee shall be discharged from any legal obligation concerning such cremated remains.

(f) The provisions of this section shall not apply to any cremation authorization form or preneed contract executed prior to the effective date of this act. Any funeral establishment, however, with the written approval of the authorizing agent or person who executed the preneed contract, may designate that such cremation authorization form or preneed contract shall be subject to this act.

~~"§ 90-210.44. Authorization and record keeping.~~

~~The Board shall establish requirements for record keeping, authorizations, and cremation reports. It shall be a violation of this Article for any crematory operator to fail to comply with the requirements.~~

"**§ 90-210.47. Record keeping.**

(a) The crematory licensee shall furnish to the person who delivers such human remains to the crematory licensee a receipt, signed by both the crematory licensee and the person who delivers the human remains, showing the date and time of the delivery; the type of casket or cremation container that was delivered; the name of the person from whom the human remains were received and the name of the funeral establishment or other entity with whom such person is affiliated; the name of the person who received the human remains on behalf of the crematory licensee; and the name of the decedent. The crematory licensee shall retain a copy of this receipt in its permanent records for three years.

(b) Upon its release of cremated remains, the crematory licensee shall furnish to the person who receives such cremated remains from the crematory licensee a receipt, signed by both the crematory licensee and the person who receives the cremated remains, showing the date and time of the release; the name of the person to whom the cremated remains were released and the name of the funeral establishment, cemetery, or other entity with whom such person is affiliated; the name of the person who released the cremated remains on behalf of the crematory licensee; and the name of the decedent. The crematory shall retain a copy of this receipt in its permanent records for three years.

(c) A crematory licensee shall maintain at its place of business a record of all forms required by the Board of each cremation that took place at its facility for three years.

(d) The crematory licensee shall maintain a record for three years of all cremated remains disposed of by the crematory licensee in accordance with G.S. 90-210.46(d).

(e) Upon completion of the cremation, the crematory licensee shall issue a certificate of cremation.

(f) All records that are required to be maintained under this Article shall be subject to inspection by the Board or its agents upon request.

"**§ 90-210.48. Cremation containers.**

(a) No crematory licensee shall make or enforce any rules requiring that any human remains be placed in a casket before cremation or that human remains be cremated in a casket, nor shall any crematory licensee refuse to accept human remains for cremation for the reason that they are not in a casket.

(b) No crematory licensee shall make or enforce any rules requiring that any cremated remains be placed in an urn or receptacle designed to permanently encase the cremated remains after the cremation process has been performed.

~~"§ 90-210.45. Cremation procedures.~~

~~(a) No human body shall be cremated before the crematory operator receives a death certificate signed by the attending physician or an authorization for cremation signed by a medical examiner.~~

~~(b) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious or communicable and dangerous disease as listed by the Commission of Health Services pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred. In the event such death comes under the jurisdiction of the medical examiner, the human remains shall not be received by the crematory operator until authorization to cremate has been received in writing from the medical examiner of the county in which the death occurred. In the event the crematory operator is authorized to perform funerals as well as cremation, this restriction on the receipt of human remains shall not be applicable.~~

~~(c) No unauthorized person shall be permitted in the crematory area while any human remains are in the crematory area awaiting cremation, being cremated, or being removed from the cremation chamber. Relatives of the deceased, the authorizing agent, medical examiners and law enforcement officers in the execution of their duties shall be authorized to have access to the holding facility and crematory facility.~~

~~(c1) Human remains shall be cremated only while enclosed in a cremation container.~~

~~(d) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden.~~

~~(d1) Every crematory shall have a holding facility, within or adjacent to the crematory, designated for the retention of human remains prior to cremation. The holding facility must comply with any applicable public health laws and rules and must meet all of the standards established pursuant to rules adopted by the Board.~~

~~(e) Crematory operators shall comply with standards established by the Board for the reduction and pulverization of human remains by the cremation process.~~

"**§ 90-210.49. Cremation procedures.**

(a) In deaths certified by the attending physician, the body shall not be cremated before the crematory licensee receives a death certificate signed by the attending physician, which shall contain at a minimum the following information:

(1) Decedent's name;
(2) The date of death;
(3) Date of birth;
(4) Sex;
(5) The place of death;
(6) Facility name (if not institution, give street and number);
(7) County of death;
(8) City of death; and
(9) Time of death (if known).

(b) When required by G.S. 130A-388 and the rules adopted pursuant to that section or by successor statute and the rules pursuant to it, a cremation authorization form signed by a medical examiner shall be received by the crematory prior to cremation.

(c) In deaths coming under full investigation by the Office of the Chief Medical Examiner, a burial-transit permit/cremation authorization form must be received by the crematory before cremation.

(d) No body shall knowingly be cremated with a pacemaker or defibrillator or other potentially hazardous implant or condition in place. The authorizing agent for the cremation of the human remains shall be responsible for taking all necessary steps to ensure that any pacemaker or defibrillator or other potentially hazardous implant or condition is removed or corrected prior to cremation. If an authorizing agent informs the funeral director and the crematory licensee on the cremation authorization form of the presence of a pacemaker or defibrillator or other potentially hazardous implant or condition in the human remains, then the funeral director shall be responsible for ensuring that all necessary steps have been taken to remove the pacemaker or defibrillator or other potentially hazardous implant or to correct the hazardous condition before delivering the human remains to the crematory. Should the funeral director who knows and delivers the human remains to the crematory fail to ensure that the pacemaker or defibrillator or other potentially hazardous implant or condition is removed or corrected from the human remains prior to delivery, and should the human remains be cremated with the pacemaker or defibrillator or other potentially hazardous implant or condition, then the funeral director who delivered the human remains to the crematory and anyone else covered by this section shall be liable for all resulting damages.

(e) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious, or communicable and dangerous disease as listed by the Commission of Health Services pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred.

(f) No unauthorized person shall be permitted in view of the cremation chamber or in the holding and processing facility while any human remains are being removed from the cremation container, processed, or pulverized. Relatives of the deceased and their invitees, the authorizing agent and the agent's invitees, medical examiners, Inspectors of the North Carolina Board of Funeral Service, and law enforcement

officers in the execution of their duties shall be authorized to have access to the crematory area, subject to the rules adopted by the crematory licensee governing the safety of such individuals.

(g) Human remains shall be cremated only while enclosed in a cremation container. Upon completion of the cremation, and insofar as is possible, all of the recoverable residue of the cremation process shall be removed from the cremation chamber. Insofar as is possible, all residue of the cremation process shall then be separated from any foreign residue or anything else other than bone fragments and then be processed by pulverization so as to reduce the cremated remains to unidentifiable particles. Any foreign residue and anything other than the particles of the cremated remains shall be removed from the cremated remains as far as possible and shall be disposed of by the crematory licensee. This section does not apply where law otherwise provides for commingling of human remains. The fact that there is incidental and unavoidable residue in the cremation chamber used in a prior cremation is not a violation of this subsection of this Article.

(h) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden.

(i) Every crematory shall have a holding and processing facility, within the crematory, designated for the retention of human remains prior to cremation. The holding and processing facility must comply with any applicable public health laws and rules and must meet all of the standards established pursuant to rules adopted by the Board.

(j) Crematory licensees shall comply with standards established by the Board for the processing and pulverization of human remains by cremation.

(k) Nothing in this Article shall require a crematory licensee to perform a cremation that is impossible or impractical to perform.

(l) The cremated remains with proper identification shall be placed in a temporary container or the urn selected or provided by the authorizing agent. The temporary container or urn contents shall not be contaminated with any other object, unless specific authorization has been received from the authorizing agent or as provided in subsection (g) of this section.

(m) If the cremated remains are greater than the dimensions of a temporary container or urn, the excess cremated remains shall be returned to the authorizing agent or its representative in a separate container or urn.

(n) If the cremated remains are to be shipped, the temporary container or urn shall be packed securely in a suitable shipping container that complies with the requirements of the shipper. Cremated remains shall be shipped only by a method which has an internal tracing system available and which provides a receipt signed by the person accepting delivery, unless otherwise authorized in writing by the authorizing agent. Cremated remains shall be shipped to the proper address as stated on the cremation authorization form signed by the authorizing agent.

~~"§ 90-210.46. Disposition of cremated remains.~~

~~(a) The authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of~~

~~the cremated remains, if known. The crematory operator may store or retain cremated remains as directed by the authorizing agent. Records of retention and disposition of cremated remains shall be kept by the crematory operator pursuant to G.S. 90-210.44.~~

~~(b) The authorizing agent is responsible for the disposition of the cremated remains. If, after a period of 30 days from the date of cremation, the authorizing agent or his representative has not specified the ultimate disposition or claimed the cremated remains, the crematory operator or the person in possession of the cremated remains may dispose of the cremated remains only in a manner permitted in this section. The authorizing agent shall be responsible for reimbursing the crematory operator for all reasonable expenses incurred in disposing of the cremated remains pursuant to this section. A record of such disposition shall be made and kept by the person making such disposition. Upon disposing of cremated remains in accordance with this section, the crematory operator or person in possession of the cremated remains shall be discharged from any legal obligation or liability concerning such cremated remains.~~

~~(c) In addition to the disposal of cremated remains in a crypt, niche, grave, or scattering garden located in a dedicated cemetery, or by scattering over uninhabited public land, the sea or other public waterways pursuant to subsection (f) of this section, cremated remains may be disposed of in any manner on the private property of a consenting owner, upon direction of the authorizing agent. If cremated remains are to be disposed of by the crematory operator on private property, other than dedicated cemetery property, the authorizing agent shall provide the crematory operator with the written consent of the property owner.~~

~~(d) Except with the express written permission of the authorizing agent no person may:~~

~~(1) Dispose of or scatter cremated remains in such a manner or in such a location that the cremated remains are commingled with those of another person. This subdivision shall not apply to the scattering of cremated remains at sea or by air from individual closed containers or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for such purposes.~~

~~(2) Place cremated remains of more than one person in the same closed container. This subdivision shall not apply to placing the cremated remains of members of the same family in a common closed container designed for the cremated remains of more than one person.~~

~~(e) Cremated remains shall be delivered by the crematory operator to the individual specified by the authorizing agent on the cremation authorization form. The representative of the crematory operator and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased, and the date, time, and place of the receipt. After this delivery, the cremated remains may be transported in any manner in this State, without a permit, and disposed of in accordance with the provisions of this Article.~~

~~(f) Cremated remains may be scattered over uninhabited public land, a public waterway or sea, subject to health and environmental standards, or on the private property of a consenting owner pursuant to subsection (c) of this section. A person may~~

~~utilize a boat or airplane to perform such scattering. Cremated remains shall be removed from their closed container before they are scattered.~~

"**§ 90-210.50. Final disposition of cremated remains.**

(a) The authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. The crematory licensee may store or retain cremated remains as directed by the authorizing agent. Records of retention and disposition of cremated remains shall be kept by the crematory licensee pursuant to G.S. 90-210.47.

(b) The authorizing agent is responsible for the disposition of the cremated remains. If, after a period of 30 days from the date of cremation, the authorizing agent or the agent's representative has not specified the final disposition or claimed the cremated remains, the crematory licensee or the person in possession of the cremated remains may dispose of the cremated remains only in a manner permitted in this section. The authorizing agent shall be responsible for reimbursing the crematory licensee for all reasonable expenses incurred in disposing of the cremated remains pursuant to this section. A record of such disposition shall be made and kept by the person making the disposition. Upon disposing of cremated remains in accordance with this section, the crematory licensee or person in possession of the cremated remains shall be discharged from any legal obligation or liability concerning such cremated remains.

(c) In addition to the disposal of cremated remains in a crypt, niche, grave, or scattering garden located in a dedicated cemetery, or by scattering over uninhabited public land, the sea, or other public waterways pursuant to subsection (f) of this section, cremated remains may be disposed of in any manner on the private property of a consenting owner, upon direction of the authorizing agent. If cremated remains are to be disposed of by the crematory licensee on private property, other than dedicated cemetery property, the authorizing agent shall provide the crematory licensee with the written consent of the property owner.

(d) Except with the express written permission of the authorizing agent, no person may:

(1) Dispose of or scatter cremated remains in such a manner or in such a location that the cremated remains are commingled with those of another person. This subdivision shall not apply to the scattering of cremated remains at sea or by air from individual closed containers or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for such purposes.

(2) Place cremated remains of more than one person in the same closed container. This subdivision shall not apply to placing the cremated remains of members of the same family in a common closed container designed for the cremated remains of more than one person with the written consent of the family.

(e) Cremated remains shall be released by the crematory licensee to the individual specified by the authorizing agent on the cremation authorization form. The representative of the crematory licensee and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased, and the date, time, and

place of the receipt, and contain a representation that the handling of the final disposition will be in a proper manner. After this delivery, the cremated remains may be transported in any manner in this State, without a permit, and disposed of in accordance with the provisions of this Article.

(f) Cremated remains may be scattered over uninhabited public land, over a public waterway or sea, subject to health and environmental standards, or on the private property of a consenting owner pursuant to subsection (c) of this section. A person may utilize a boat or airplane to perform such scattering. Cremated remains shall be removed from their closed container before they are scattered.

~~"§ 90-210.47. Liability.~~

~~(a) Any person signing a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth in the cremation authorization form, including the identity of the deceased whose remains are sought to be cremated and that person's authority to order such cremation.~~

~~(b) A crematory operator shall have authority to cremate human remains only upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability of a crematory operator that cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization.~~

~~(c) A crematory operator shall not be responsible or liable for any valuables delivered to the crematory operator with human remains.~~

~~(d) A crematory operator shall not be liable for refusing to accept a body or to perform a cremation until it receives a court order or other suitable confirmation that a dispute has been settled if:~~

~~(1) It is aware of any dispute concerning the cremation of human remains;~~

~~(2) It has a reasonable basis for questioning any of the representations made by the authorizing agent; or~~

~~(3) For any other lawful reason.~~

~~(e) If a crematory operator is aware of any dispute concerning the release or disposition of the cremated remains, the crematory operator may refuse to release the cremated remains until the dispute has been resolved or the crematory operator has been provided with a court order authorizing the release or disposition of the cremated remains. A crematory operator shall not be liable for refusing to release or dispose of cremated remains in accordance with this subsection.~~

"**§ 90-210.51. Limitation of liability.**

(a) Any person signing a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth in the cremation authorization form, including the identity of the deceased whose remains are sought to be cremated and that person's authority to order such cremation.

(b) A crematory licensee shall have authority to cremate human remains only upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability of a crematory licensee that cremates human remains pursuant to such authorization or that releases or disposes of the cremated remains pursuant to such authorization. A crematory licensee shall have no liability for the final

disposition or manner in which the cremated remains are handled after the cremated remains are released in accordance with the directions of the authorizing agent.

(c) A crematory licensee shall not be responsible or liable for any valuables delivered to the crematory licensee with human remains.

(d) A crematory licensee shall not be liable for refusing to accept a body or to perform a cremation until it receives a court order or other suitable confirmation that a dispute has been settled if:

(1) It is aware of any dispute concerning the cremation of human remains;

(2) It has a reasonable basis for questioning any of the representations made by the authorizing agent; or

(3) For any other lawful reason.

(e) If a crematory licensee is aware of any dispute concerning the release or disposition of the cremated remains, the crematory licensee may refuse to release the cremated remains until the dispute has been resolved or the crematory licensee has been provided with a court order authorizing the release or disposition of the cremated remains. A crematory licensee shall not be liable for refusing to release or dispose of cremated remains in accordance with this subsection. A crematory licensee may charge a reasonable storage fee if the dispute is not resolved within 30 days after it is received by the crematory licensee.

~~"§ 90-210.48. Fees.~~

~~(a) The Board may set and collect fees not to exceed the following amounts from licensed crematory operators and applicants:~~

~~(1)~~	~~Licensee application fee~~	~~$400.00~~
~~(2)~~	~~Annual renewal fee~~	~~150.00~~
~~(3)~~	~~Late renewal penalty~~	~~75.00~~
~~(4)~~	~~Re-inspection fee~~	~~100.00~~
~~(5)~~	~~Per cremation fee.~~	~~10.00~~
~~(6)~~	~~Late fee, per cremation.~~	~~10.00~~
~~(7)~~	~~Late fee, cremation report~~	~~75.00 per month.~~

~~(b) The funds collected pursuant to this Article shall become part of the general fund of the Board. The cost of the maintenance of the Crematory Authority shall be deemed a general expense of the Board. The Board shall keep an accurate accounting of all the receipts and expenditures made pursuant to this Article and shall provide a current report of such to the Crematory Authority biannually.~~

"§ 90-210.52. Fees.

(a) The Board may set and collect fees not to exceed the following amounts from licensed crematory licencees and applicants:

(1)	Licensee application fee	$400.00
(2)	Annual renewal fee	150.00
(3)	Late renewal fee	75.00
(4)	Reinspection fee	100.00
(5)	Per cremation fee	10.00
(6)	Late fee, per cremation	10.00
(7)	Late fee, cremation report	75.00 per month.

(b) The funds collected pursuant to this Article shall become part of the general fund of the Board.

~~"§ 90-210.49. Crematory operator authority.~~

~~(a) A crematory operator may employ a licensed funeral director for the purpose of arranging cremations with the general public, transporting human remains to the crematory, and processing all necessary paper work. Nothing in this provision may be construed to require a licensed funeral director to perform any functions not otherwise required by law to be performed by a licensed funeral director.~~

~~(b) A crematory operator may adopt reasonable rules consistent with this Article for the management and operation of a crematory. Nothing in this subsection may be construed to prevent a crematory operator from adopting rules which are more stringent than the provisions of this Article.~~

~~(c) Nothing in this Article shall prohibit or require the performance of cremations by crematory operators for or directly with the public, or exclusively for or through licensed funeral directors.~~

~~(d) Nothing in this Article may be construed to prohibit a crematory operator from transporting human remains.~~

~~(e) Nothing in this Article may be construed to relieve the holder of a license issued hereunder from obtaining any other licenses or permits required by law.~~

"**§ 90-210.53. Crematory licensee rights.**

(a) A crematory licensee may employ a licensed funeral director for the purpose of arranging cremations with the general public and processing all necessary paperwork.

(b) A crematory licensee may adopt reasonable rules consistent with this Article for the management and operation of a crematory. Nothing in this subsection may be construed to prevent a crematory licensee from adopting rules which are more stringent than the provisions of this Article.

(c) Nothing in this Article may be construed to relieve the crematory licensee from obtaining any other licenses or permits required by law.

~~"§ 90-210.50. Rulemaking, applicability, violations, and prohibitions of Article.~~

~~(a) The Board is authorized to adopt and promulgate such rules for the carrying out and enforcement of the provisions of this Article as may be necessary and as are consistent with the laws of this State and of the United States. The Board shall adopt rules only after consideration of the Crematory Authority's suggested rules pursuant to G.S. 90-210.42(a). The Board may perform such other acts and exercise such other powers and duties as may be provided in this Article, in Article 13A of this Chapter, and otherwise by law and as may be necessary to carry out the powers herein conferred.~~

~~(b) The provisions of this Article shall not apply to the cremation of human remains and medical waste performed by the North Carolina Anatomical Commission, licensed hospitals and medical schools, and the office of the Chief Medical Examiner when the disposition of such human remains and medical waste is the legal responsibility of said institutions.~~

~~(c) A violation of any of the provisions of this Article is a Class 2 misdemeanor.~~

~~(d) No person, firm, or corporation may request or authorize cremation or cremate a dead human body when he has information indicating a crime or violence of~~

~~any sort in connection with the cause of death unless such information has been conveyed to the State or county medical examiner and permission from the State or county medical examiner to cremate has thereafter been obtained.~~

"**§ 90-210.54. Rulemaking, applicability, violations, and prohibitions of Article.**

(a) The Board is authorized to adopt and promulgate such rules for the carrying out and enforcement of the provisions of this Article as may be necessary and as are consistent with the laws of this State and of the United States. The Board may develop a Standard Cremation Authorization Form and procedures for its execution that shall be used by the crematory licensee subject to this Article, unless a crematory has its own form approved by the Board. A crematory licensee that uses its own approved cremation authorization form must have the cremation authorization form reapproved if changed or after amendments are made to this Article or the rules adopted by the Board related to cremation authorization forms. The Board may perform such other acts and exercise such other powers and duties as may be provided in this Article, in Article 13A of this Chapter, and otherwise by law and as may be necessary to carry out the powers herein conferred.

(b) The provisions of this Article shall not apply to the cremation of medical waste performed by the North Carolina Anatomical Commission, licensed hospitals and medical schools, and the office of the Chief Medical Examiner when the disposition of such medical waste is the legal responsibility of the institutions.

(c) A violation of any of the provisions of this Article is a Class 2 misdemeanor.

(d) No person, firm, or corporation may request or authorize cremation or cremate human remains when the person, firm, or corporation has information indicating a crime or violence of any sort in connection with the cause of death unless such information has been conveyed to the State or county medical examiner and permission from the State or county medical examiner to cremate human remains has thereafter been obtained."

SECTION 3. G.S. 90-210.20(k) reads as rewritten:

"(k) "Practice of funeral service" means engaging in the care or disposition of dead human bodies or in the practice of disinfecting and preparing by embalming or otherwise dead human bodies for the funeral service, transportation, burial or cremation, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. "Practice of funeral service" also means engaging in making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of such services or the sale of such supplies. 'Practice of funeral service' also includes the cremation of human remains."

SECTION 4. G.S. 90-21.22 reads as rewritten:

"**§ 90-210.22. Required meetings of the Board.**

The Board shall hold at least ~~two~~ four meetings in each ~~year at which examinations shall be given to qualified applicants for licenses.~~year. In addition, the Board may meet as often as the proper and efficient discharge of its duties shall require. Five members shall constitute a quorum."

SECTION 5.(a) G.S. 90-210.23(b) reads as rewritten:

"**§ 90-210.23. Powers and duties of the Board.**

...

(b) The Board shall elect from its members a president, a vice-president and a secretary, no two offices to be held by the same person. The president and vice-president and secretary shall serve for one year and until their successors shall be elected and ~~qualify.~~ qualified. The Board shall have authority to engage adequate staff as deemed necessary to perform its duties."

SECTION 5.(b) G.S. 90-210.23 is amended by adding the following new subsections to read:

"(h1) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing, and sale of real property. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(h2) The Board may employ legal counsel and clerical and technical assistance, and fix the compensation therefor, and incur such other expenses as may be deemed necessary in the performance of its duties and the enforcement of the provisions of this Article or as otherwise required by law and as may be necessary to carry out the powers herein conferred."

SECTION 6.(a) G.S. 90-210.24(a) reads as rewritten:

"**§ 90-210.24. Inspector.**

(a) The Board may appoint one or more agents who shall serve at the pleasure of the Board and who shall have the title "Inspector of the ~~Board of Mortuary Science of North Carolina".~~North Carolina Board of Funeral Service." No person is eligible for appointment as inspector unless at the time of ~~his~~ the appointment ~~he~~ the person is licensed under this Article as a funeral service licensee."

SECTION 6.(b) G.S. 90-210.24 is amended by adding the following new subsection to read:

"(e) The Board's Executive Director shall have all the powers of an Inspector of the North Carolina Board of Funeral Services."

SECTION 7. G.S. 90-210.25 reads as rewritten:

"**§ 90-210.25. Licensing.**

(a) Qualifications, Examinations, Resident Traineeship and Licensure. –

(1) To be licensed for the practice of funeral directing under this Article, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Be a graduate of a Funeral Director Program at a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction, including the subjects set out in sub-part e.1. of this subdivision, as prescribed by a mortuary

science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education.

d. Have completed 12 months of resident traineeship as a funeral director, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.

e. Have passed an oral or written funeral director examination on the following subjects:

1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.
2. Repealed by 1997-399, s. 5.
3. Laws of North Carolina and rules of the Board ~~of Mortuary Science~~ and other agencies dealing with the care, transportation and disposition of dead human bodies.

(2) To be licensed for the practice of embalming under this Article, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Be a graduate of a mortuary science college approved by the Board.

d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.

e. Have passed an oral or written embalmer examination on the following subjects:

1. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
2. Repealed by 1997-399, s. 6.
3. Laws of North Carolina and rules of the Board ~~of Mortuary Science~~ and other agencies dealing with the care, transportation and disposition of dead human bodies.

(3) To be licensed for the practice of funeral service under this Article, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Be a graduate of <u>and receive an associate degree from</u> a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral

Service Education. Have completed a minimum of ~~32~~ 60 semester hours or ~~48~~ 90 quarter hours of instruction, including the subjects set out in sub-part e.1. of this subdivision, as prescribed by a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education.

d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivison c. of this subdivision.

e. Have passed an oral or written funeral service examination on the following subjects:

1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.
2. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
3. Repealed by 1997-399, s. 7.
4. Laws of North Carolina and rules of the Board ~~of Mortuary Science~~ and other agencies dealing with the care, transportation and disposition of dead human bodies.

(4) a. A person desiring to become a resident trainee shall apply to the Board on a form provided by the Board. The application shall state that the applicant is not less than 18 years of age, of good moral character, and is the graduate of a high school or the equivalent thereof, and shall indicate the licensee under whom the applicant expects to train. A person training to become an embalmer may serve under either a licensed embalmer or a funeral service licensee. A person training to become a funeral director may serve under either a licensed funeral director or a funeral service licensee. A person training to become a funeral service licensee shall serve under a funeral service licensee. The application must be sustained by oath of the applicant and be accompanied by the appropriate fee. When the Board is satisfied as to the qualifications of an applicant it shall instruct the secretary to issue a certificate of resident traineeship.

b. When a resident trainee leaves the proctorship of the licensee under whom the trainee has worked, the licensee shall file with the Board an affidavit showing the length of time served with the licensee by the trainee, and the affidavit shall be made a matter of record in the Board's office. The licensee shall deliver a copy of the affidavit to the trainee.

c. A person who has not completed the traineeship and wishes to do so under a licensee other than the one whose name appears on the original certificate may reapply to the Board for ~~approval, without payment of an additional fee.~~ approval.

d. A certificate of resident traineeship shall be signed by the resident trainee and upon payment of the renewal fee shall be renewable one year after the date of original registration; but the certificate may not be renewed more than ~~one time.~~ two times. The Board shall mail to each registered trainee at his last known address a notice that the renewal fee is due and that, if not paid within 30 days of the notice, the certificate will be canceled. A ~~penalty,~~ late fee in addition to the renewal fee, shall be charged for a late renewal, but the renewal of the registration of any resident trainee who is engaged in the active military service of the United States at the time renewal is due may, at the discretion of the Board, be held in abeyance for the duration of that service without penalties. No credit shall be allowed for the 12-month period of resident traineeship that shall have been completed more than ~~three~~ five years preceding the examination for a license.

e. All registered resident trainees shall report to the Board at least once every month during traineeship upon forms provided by the Board listing the work which has been completed during the preceding month of resident traineeship. The data contained in the reports shall be certified as correct by the licensee under whom the trainee has served during the period and by the licensed person who is managing the funeral service establishment. Each report shall list the following:

1. For funeral director trainees, the conduct of any funerals during the relevant time period,
2. For embalming trainees, the embalming of any bodies during the relevant time period,
3. For funeral service trainees, both of the activities named in 1 and 2 of this subsection, engaged in during the relevant time period.

f. To meet the resident traineeship requirements of G.S. 90-210.25(a)(1), G.S. 90-210.25(a)(2) and G.S. 90-210.25(a)(3) the following must be shown by the affidavit(s) of the licensee(s) under whom the trainee worked:

1. That the funeral director trainee has, under supervision, assisted in directing at least 25 funerals during the resident traineeship,

2. That the embalmer trainee has, under supervision, assisted in embalming at least 25 bodies during the resident traineeship,
3. That the funeral service trainee has, under ~~supervision~~ supervision, assisted in directing at least 25 funerals and, under supervision, assisted in embalming at least 25 bodies during the resident traineeship.

g. The Board may suspend or revoke a certificate of resident traineeship for violation of any provision of this Article.

h. Each sponsor for a registered resident trainee must during the period of sponsorship be actively employed with a funeral establishment. The traineeship shall be a primary vocation of the trainee.

i. Only one resident trainee may register and serve at any one time under any one person licensed under this Article.

j., k. Repealed by Session Laws 1991, c. 528, s. 4.

l. The Board shall register no more than one resident trainee at a funeral establishment that served 100 or fewer families during the 12 months immediately preceding the date of the application, and shall register no more than one resident trainee for each additional 100 families served at the funeral establishment during the 12 months immediately preceding the date of the application.

(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

a. All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

b. The holder of any license issued by the Board who shall fail to renew the same on or before ~~January 31~~February 1 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of

Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom.

c. All licensees now or hereafter licensed in North Carolina shall take continuing education courses ~~of study~~ in subjects relating to the practice of the profession for which they are licensed, to the end that ~~new techniques, scientific and clinical advances, the achievements of research and~~ the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.

d. As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least ~~five~~ 10 hours of continuing education courses, of which the Board may require licensees to take up to three hours specified by the Board and two hours may be self-study. All continuing education courses must be approved by the Board prior to enrollment. A licensee who completes more than ~~five~~ 10 hours in a year may carry over a maximum of ~~five~~ 10 hours as a credit to the following year's requirement. A licensee who is issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year.

e. The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North Carolina, and the Board shall waive the requirement for all licensees who were licensed on or before December 31, 2003, and have been licensed in North Carolina for a continuous period of 25 years or more, for all licensees who are licensed on or after January 1, 2004, who have been licensed for a continuous period of 25 years or more

and have attained the age of 60 years, and for all licensees who are, at the time of renewal, members of the General Assembly.

f. The Board shall cause to be established and offered to the licensees, each calendar year, at least ~~five~~ eight hours of continuing education ~~courses in subjects encompassing the license categories of embalming, funeral directing and funeral service.~~courses. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.

g. Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee.

h. The Department of Justice may provide a criminal record check to the Board for a person who has applied for a new or renewal license, or certification through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision.

(a1) Inactive Licenses. – Any person holding a license issued by the Board for funeral directing, for embalming, or for the practice of funeral service may apply for an inactive license in the same category as the active license held. The inactive license is renewable annually. Continuing education is not required for the renewal of an inactive license. The only activity that a holder of an inactive license may engage in is to vote pursuant to G.S. 90-210.18(c)(2). The holder of an inactive license may apply for an active license in the same category, and the Board shall issue an active license if the applicant has completed in North Carolina a total number of hours of accredited continuing education equal to five times the number of years the applicant held the inactive license. No application fee is required for the reinstatement of an active license pursuant to this subsection. The holder of an inactive license who returns to active status shall surrender the inactive license to the Board.

(a2) In order to engage in the practice of funeral directing or funeral service, such a licensee must own, be employed by, or otherwise be an agent of a licensed funeral establishment; except that such a licensee may practice funeral directing or funeral service if:

(1) Employed by a college of mortuary science; or

(2) The licensee:

a. Maintains all of his or her business records at a location made known to the Board and available for inspection by the Board under the same terms and conditions as the business records of a licensed funeral establishment;

b. Complies with rules and regulations imposed on funeral establishments and the funeral profession that are designed to protect consumers, to include, but not limited to, the Federal Trade Commission's laws and rules requiring General Price Lists and Statements of Goods and Services; and

c. Pays to the Board the funeral establishment license fee required by law and set by the Board.

Nothing in this subdivision shall preclude a licensee from arranging cremations and cremating human remains while employed by a crematory.

(b) Persons Licensed under the Laws of Other Jurisdictions. –

(1) The Board shall grant licenses to funeral directors, embalmers and funeral service licensees, licensed in other states, territories, the District of Columbia, and foreign countries, when it is shown that the applicant holds a valid license as a funeral director, embalmer or funeral service licensee issued by the other jurisdiction, has demonstrated knowledge of the laws and ~~regulations~~ rules governing the profession in North Carolina and has submitted proof of his good moral character; and either that the applicant has continuously practiced the profession in the other jurisdiction for at least three years immediately preceding his application, or the Board has determined

that the licensing requirements for the other jurisdiction are substantially similar to those of North Carolina.

(2) The Board shall periodically review the mortuary science licensing requirements of other jurisdictions and shall determine which licensing requirements are substantially similar to the requirements of North Carolina.

(3) The Board may issue special permits, to be known as courtesy cards, permitting nonresident funeral directors, embalmers and funeral service licensees to remove bodies from and to arrange and direct funerals and embalm bodies in this State, but these privileges shall not include the right to establish a place of business in or engage generally in the business of funeral directing and embalming in this State. Except for special permits issued by the Board for teaching continuing education programs and for work in connection with disasters, no special permits may be issued to nonresident funeral directors, embalmers, and funeral service licensees from states that do not issue similar courtesy cards to persons licensed in North Carolina pursuant to this Article.

(c) Registration, Filing and Transportation. –

(1) The holder of any license granted by this State for those within the funeral service profession or renewal thereof provided for in this Article shall cause registration to be filed in the office of the board of health of the county or city in which he practices his profession, or if there be no board of health in such county or city, at the office of the clerk of the superior court of such county. All such licenses, certificates, duplicates and renewals thereof shall be displayed in a conspicuous place in the funeral establishment where the holder renders service.

(2) It shall be unlawful for any railway agent, express agency, baggage master, conductor or other person acting as such, to receive the dead body of any person for shipment or transportation by railway or other public conveyance, to a point outside of this State, unless the body is accompanied by a burial-transit permit.

(3) The "transportation or removal of a dead human body" shall mean the removal of a dead human body for a fee from the location of the place of death or discovery of death or the transportation of the body to or from a medical facility, funeral establishment or facility, crematory or related holding facility, place of final disposition, or place designated by the Medical Examiner for examination or autopsy of the dead human body.

(4) Any individual, not otherwise exempt from this subsection, shall apply for and receive a permit from the Board before engaging in the transportation or removal of a dead human body in this State. Unless otherwise exempt from this subsection, no corporation or other

business entity shall engage in the transportation or removal of a dead human body unless it has in its employ at least one individual who holds a permit issued under this section. No individual permit holder shall engage in the transportation or removal of a dead human body for more than one person, firm, or corporation without first providing the Board with written notification of the name and physical address of each such employer.

(5) The following persons shall be exempt from the permit requirements of this section but shall otherwise be subject to subdivision (9) of this subsection and any rules relating to the proper handling, care, removal, or transportation of a dead human body:

a. Licensees under this Article and their employees.

b. Employees of common carriers.

c. Except as provided in sub-subdivision (6)c. of this section, employees of the State and its agencies and employees of local governments and their agencies.

d. Funeral directors licensed in another state and their employees.

(6) The following persons shall be exempt from this section:

a. Emergency medical technicians, rescue squad workers, volunteer and paid firemen, and law enforcement officers.

b. Employees of public or private hospitals, nursing homes, or long-term care facilities, while handling a dead human body within such facility or while acting within the scope of their employment.

c. State and county medical examiners and their investigators.

d. Any individual transporting cremated remains.

e. Any individual transporting or removing a dead human body of their immediate family or next of kin.

f. Any individual who has exhibited special care and concern for the decedent.

(7) Individuals eligible to receive a permit under this section for the transportation or removal of a dead human body for a fee, shall:

a. Be at least 18 years of age.

b. Possess and maintain a valid drivers license issued by this State and provide proof of all liability insurance required for the registration of any vehicle in which the person intends to engage in the business of the removal or transportation of a dead human body.

c. Affirmatively state under oath that the person has read and understands the statutes and rules relating to the removal and transportation of dead human bodies and any guidelines as may be adopted by the Board.

d. Provide three written character references on a form prescribed by the Board, one of which must be from a licensed funeral director.

e. Be of good moral character.

(8) The permit issued under this section shall expire on December 31 of each year. The application fee for the individual permit shall not exceed one hundred twenty-five dollars ($125.00). A fee, not to exceed one hundred dollars ($100.00), in addition to the renewal fee not to exceed seventy-five dollars ($75.00), shall be charged for any application for renewal received by the Board after February 1 of each year.

(9) No person shall transport a dead human body in the open cargo area or passenger area of a vehicle or in any vehicle in which the body may be viewed by the public. Any person removing or transporting a dead human body shall either cover the body, place it upon a stretcher designed for the purpose of transporting humans or dead human bodies in a vehicle, and secure such stretcher in the vehicle used for transportation, or shall enclose the body in a casket or container designed for common carrier transportation, and secure the casket or container in the vehicle used for transportation. No person shall fail to treat a dead human body with respect at all times. ~~use profanity, indecent, or obscene language in the presence of a dead human body.~~ No person shall take a photograph or video recording of a dead human body without the consent of a member of the deceased's immediate family or next of ~~kin.~~kin or other authorizing agent.

(10) The Board may adopt rules under this section including permit application procedures and the proper procedures for the removal, handling, and transportation of dead human bodies. The Board shall consult with the Office of the Chief Medical Examiner before initiating rule making under this section and before adopting any rules pursuant to this section. Nothing in this section prohibits the Office of the Chief Medical Examiner from adopting policies and procedures regarding the removal, transportation, or handling of a dead human body under the jurisdiction of that office that are more stringent than the laws in this section or any rules adopted under this section. Any violation of this section or rules adopted under this section may be punished by the Board by a suspension or revocation of the permit to transport or remove dead human bodies or by a term of probation. The Board may, in lieu of any disciplinary measure, accept a penalty not to exceed five thousand dollars ($5,000) per violation.

(11) Each applicant for a permit shall provide the Board with the applicant's home address, name and address of any corporation or business entity employing such individual for the removal or transportation of dead human bodies, and the make, year, model, and license plate number of

any vehicle in which a dead human body is transported. A permittee shall provide written notification to the Board of any change in the information required to be provided to the Board by this section or by the application for a permit within 30 days after such change takes place.

(12) If any person shall engage in or hold himself out as engaging in the business of transportation or removal of a dead human body without first having received a permit under this section, the person shall be guilty of a Class 2 misdemeanor.

(13) The Board shall have the authority to inspect any place or premises that the business of removing or transporting a dead human body is carried out and shall also have the right of inspection of any vehicle and equipment used by a permittee for the removal or transportation of a dead human body.

(d) Establishment Permit. –

(1) No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for that establishment has been issued by the Board and is conspicuously displayed in the establishment. Each funeral establishment at a specific location shall be deemed to be a separate entity and shall require a separate permit and compliance with the requirements of this Article.

(2) A permit shall be issued when:

a. It is shown that the funeral establishment has in charge a person, known as a manager, licensed for the practice of funeral directing or funeral service, who shall not be permitted to manage more than one funeral establishment.

b. The Board receives a list of the names of all part-time and full-time licensees employed by the establishment.

c. It is shown that the funeral establishment satisfies the requirements of G.S. 90-210.27A.

d. The Board receives payment of the permit fee.

(3) Applications for funeral establishment permits shall be made on forms provided by the Board and filed with the Board by the owner, a partner, a member of the limited liability company, or an officer of the corporation by January 1 of each year, and shall be accompanied by the application fee or renewal fee, as the case may be. All permits shall expire on December 31 of each year. If the renewal application and renewal fee are not received in the Board's office on or before February 1, a late renewal fee. ~~A penalty for late renewal,~~ in addition to the regular renewal fee, shall be ~~charged for renewal of registration received after the first day of February.~~charged.

(4) The Board may suspend or revoke a permit when an owner, partner, manager, member, operator, or officer of the funeral establishment violates any provision of this Article or any regulations of the Board,

or when any agent or employee of the funeral establishment, with the consent of any person, firm or corporation operating the funeral establishment, violates any of those provisions, rules or regulations.

(5) Funeral establishment permits are not transferable. A new application for a permit shall be made to the Board within 30 days of a change of ownership of a funeral establishment.

(d1) Embalming Outside Establishment. – An embalmer who engages in embalming in a facility other than a funeral establishment or in the residence of the deceased person shall, no later than January 1 of each year, register the facility with the Board on forms provided by the Board.

(e) Revocation; Suspension; Compromise; Disclosure. –

(1) Whenever the Board finds that an applicant for a license or a person to whom a license has been issued by the Board is guilty of any of the following acts or omissions and the Board also finds that the person has thereby become unfit to practice, the Board may suspend or revoke the license or refuse to issue or renew the license, in accordance with the procedures set out in Chapter ~~150B:~~150B of the General Statutes:

a. Conviction of a felony or a crime involving fraud or moral turpitude.

b. Fraud or misrepresentation in obtaining or renewing a license or in the practice of funeral service.

c. False or misleading advertising as the holder of a license.

d. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this paragraph shall not be construed to prohibit general advertising by the licensee.

e. Employment directly or indirectly of any resident trainee agent, assistant or other person, on a part-time or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee.

f. The ~~direct or indirect giving of certificates of credit or the~~ payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing ~~business.~~business except as authorized by Article 13D of this Chapter.

g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral service.

h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material published or caused to be published by the licensee.

i. Failing to treat a dead human body with respect at all times. ~~Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the~~

~~family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of.~~

j. Violating or cooperating with others to violate any of the provisions of this Article, the rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies.

l. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to the custody thereof.

m. Knowingly making any false statement on a certificate of death.

n. Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is entitled to suspend, revoke or refuse to renew a license, the Board may accept from the licensee an offer to pay a penalty of not more than five thousand dollars ($5,000). The Board may either accept a penalty or revoke or refuse to renew a license, but not both.

(2) Where the Board finds that a licensee is guilty of one or more of the acts or omissions listed in subdivision (e)(1) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter ~~150B.~~150B of the General Statutes. In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars ($5,000) in conjunction with the probation.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he or she has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral service establishment shall accept a dead human body from any public officer (excluding the State or county medical examiner or his agent), or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the persons who have the legal authority to direct the disposition of the decedent's body. If any persons are found, their authority and directions shall govern the disposal of the remains of the decedent. Any funeral service establishment receiving the remains in violation of this subsection shall make no charge for any service in connection with the remains prior to delivery of the remains as

stipulated by the persons having legal authority to direct the disposition of the body. This section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the persons having legal authority to direct the disposition of the body have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting forth the price of the service using said merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time. The statement shall have printed, typed or stamped on the face thereof: "This statement of disclosure is provided under the requirements of North Carolina G.S. 90-210.25(e)."

(f) Unlawful Practices. – If any person shall practice or hold himself out as practicing the profession or art of embalming, funeral directing or practice of funeral service without having complied with the licensing provisions of this Article, he shall be guilty of a Class 2 misdemeanor.

(g) Whenever it shall appear to the Board that any person, firm or corporation has violated, threatens to violate or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue an order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides."

SECTION 8. G.S. 90-210.25A is recodified as G.S. 65-73A.

SECTION 9. G.S. 90-210.27A is amended by adding the following new subsections to read:

"(i) No funeral establishment shall use an unregistered or misleading name. Misleading names include, but are not limited to, names in the plural form when there is only one funeral establishment and the use of the word "crematory" or "crematorium" in

the name of a funeral establishment that does not own a crematory. If an owner of a funeral establishment owns more than one funeral establishment, the owner may not use the word "crematory" or "crematorium" in the name of more than one of its funeral establishments; except that each funeral home having a crematory on the premises may contain the term "crematory" or "crematorium" in its name.

(j) A funeral establishment will not use any name other than the name by which it is properly registered with the Board."

SECTION 10. G.S. 90-210.29A reads as rewritten:

"**§ 90-210.29A. Identification of bodies before burial or cremation.**

The funeral director or person otherwise responsible for the final disposition of a dead body shall, prior to the interment or entombment of the dead body, affix on the ankle or wrist of the dead body, or, if cremated, on the inside of the ~~vessel~~ temporary container or urn containing the remains of the dead body, a tag of durable, noncorroding material permanently marked with the name of the deceased, the date of death, the social security number of the deceased, the county and state of death, and the site of interment or entombment."

SECTION 11. G.S. 90-210.63(a)(2) reads as rewritten:

"**§ 90-210.63. Substitution of licensee.**

(a) If the preneed funeral contract is irrevocable, the preneed funeral contract purchaser, or after his death the preneed funeral contract beneficiary or his legal representative, upon written notice to the financial institution or insurance company and the preneed licensee who is a party to the preneed funeral contract, may direct the substitution of a different funeral establishment to furnish funeral services and merchandise.

...

(2) The original contracting preneed licensee shall immediately pay all funds received to the successor funeral establishment designated. Regardless of whether the substitution is made before or after the death of the preneed funeral contract beneficiary, the original contracting preneed licensee shall not be required to give credit for the amount retained pursuant to G.S. 90-210.61(a)(2), except when there was a substitution under G.S. 90-210.68(d1) and (e). ~~Except when there was a substitution under G.S. 90-210.68(d1) and (e), if the original contracting preneed licensee did not retain any portion of payments made as is permitted by G.S. 90-210.61(a)(2) then the preneed licensee may retain up to ten percent (10%) of the funds received from the financial institution.~~ Upon making payments pursuant to this subsection, the financial institution and the original contracting preneed licensee shall be relieved from all further contractual liability thereon.

..."

SECTION 12. G.S. 90-210.64(a) reads as rewritten:

"**§ 90-210.64. Death of preneed funeral contract beneficiary; disposition of funds.**

(a) After the death of a preneed funeral contract beneficiary and full performance of the preneed funeral contract by the preneed licensee, the preneed licensee shall promptly complete a certificate of performance ~~or similar claim form~~ and present it to the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the certificate of performance or similar claim form, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. Within 10 days after receiving payment, the preneed licensee shall mail a copy of the certificate of performance or other claim form to the Board."

SECTION 13. G.S. 90-210.65(e) reads as rewritten:

"**§ 90-210.65. Refund of preneed funeral funds.**

(e) This section shall not apply to irrevocable preneed funeral contracts. Irrevocable preneed funeral contracts may not be revoked nor any proceeds refunded except by order of a court of competent jurisdiction. Notwithstanding the previous sentence, irrevocable preneed funeral contracts purchased pursuant to G.S. 90-210.61(a)(3) shall also be revocable when the underlying insurance policy lapses or is otherwise cancelled and the lapsed or cancelled policy no longer provides any funding for the preneed funeral contract."

SECTION 14. G.S. 90-210.67(e) and (f) are repealed.

SECTION 15. G.S. 90-210.70 is amended by adding the following new subsection to read:

"(e) Whenever it shall appear to the Board that any person, firm, or corporation has violated, threatens to violate, or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue an order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides."

SECTION 16. G.S. 143B-472.5, as recodified by Section 17 of this act, reads as rewritten:

"**§ 90-210.35D. Assessments against ~~association for expenses of Board of Mortuary Science.~~associations.**

~~In order to meet the expenses of the supervision of the burial associations, the Board of Mortuary Science shall prepare an annual budget for the office of the Board of Mortuary Science. Thereafter, the Board of Mortuary Science shall~~ The North Carolina Board of Funeral Service shall annually assess each burial association one hundred dollars ($100.00) plus an amount not to exceed fifty cents (50¢) per member. ~~and shall prorate the remaining amount of this budget, over and above any other funds made available to it for this purpose, and assess each association on a pro rata basis in accordance with the number of members of each association.~~ Each burial association

shall remit to the Board of ~~Mortuary Science~~ Funeral Service its ~~pro rata part of the total~~ assessment, which expense shall be included in the thirty per centum (30%) expense allowance as provided in G.S. ~~143B-472.3.~~ 90-210.35B. This assessment shall be made on the first day of July of each and every year and said assessment shall be paid within 30 days thereafter. If any association shall fail or refuse to pay such assessment within 30 days, the Board of ~~Mortuary Science~~ Funeral Service is authorized to transfer all memberships and assets of every kind and description to the nearest association that is found by the Board of ~~Mortuary Science~~ Funeral Service to be in good sound financial condition."

SECTION 17. G.S. 143B-472.2 through G.S. 143B-472.29 are recodified as G.S. 90-210.35A through G.S. 90-210.35BB.

SECTION 18. This act becomes effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 550*
PROPOSED COMMITTEE SUBSTITUTE S550-CSSU-28 [v.7]

6/5/2003 2:54:24 AM

Short Title: Crematory Act Changes. (Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO IMPROVE AND STRENGTHEN CREMATION LAW IN NORTH CAROLINA AND TO IMPROVE AND MAKE TECHNICAL CORRECTIONS TO THE FUNERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. The name of the North Carolina Board of Mortuary Science is changed to the North Carolina Board of Funeral Service. The Revisor of Statutes is authorized to substitute the term "Board of Funeral Service" for the term "Board of Mortuary Science" wherever that term appears in the General Statutes.

SECTION 2. Article 13C of Chapter 90 of the General Statutes reads as rewritten:

"Article 13C.
"Cremations.

"**§ 90-210.40. Short title.**

This Article shall be known and may be cited as the North Carolina Crematory Act.

"**§ 90-210.41. Definitions.**

As used in this Article, unless the context requires otherwise:

~~(1) "Authorizing agent" means a person legally entitled to order, or carry out the legal order for, the cremation of human remains. In the case of indigents or any other individuals whose final disposition is the responsibility of the State, a public official charged with arranging the final disposition of the deceased, if legally authorized, may serve as the authorizing agent. In the case of individuals whose death occurred in a nursing home or other private institution, and in which the institution is charged with making arrangements for the final disposition of the deceased, a representative of the institution, if legally authorized, may serve as the authorizing agent.~~

~~(2) "Board" means the North Carolina State Board of Mortuary Science.~~

~~(3) Repealed by Session Laws 1997-399, s. 16.~~

~~(4) "Closed container" means any container in which cremated remains can be placed and closed in a manner so as to prevent leakage or spillage of cremated remains or the entrance of foreign material.~~

~~(5) "Cremated remains" means all human remains recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions.~~

~~(6) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments.~~

~~(7) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers covered by this Article shall be used exclusively for the cremation of human remains.~~

~~(8) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet all of the standards established by the rules adopted by the Board.~~

~~(9) "Crematory" means the building or portion of a building that houses the cremation chamber and that may house the holding facility, business office or other part of the crematory business. A crematory must comply with any applicable public health laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board.~~

~~(10) "Crematory authority" means the North Carolina Crematory Authority.~~

~~(11) "Crematory operator" means the legal entity which is licensed by the Board to operate a crematory and perform cremations.~~

~~(12) Repealed by Session Laws 1997-399, s. 16.~~

~~(13) "Human remains" means the body of a deceased person, including a human fetus, regardless of the length of gestation, or part of a body that has been removed from a living or deceased person.~~

~~(14) "Niche" means a compartment or cubicle for the memorialization or permanent placement of an urn containing cremated remains.~~

(1) 'Authorizing agent' means a person legally entitled to authorize the cremation of human remains in accordance with G.S. 90-210.44.

(2) 'Board' means the North Carolina Board of Funeral Service.

(3) 'Body parts' means limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or human bodies or any portion thereof that have been donated to science for medical purposes.

(4) 'Casket' means a rigid container that is designed for the encasement of human remains and that is usually constructed of wood, metal, or other material and ornamented and lined with fabric, and which may or may not be combustible.

(5) 'Certificate of cremation' means a certificate provided by the crematory manager who performed the cremation containing, at a minimum, the following information:
  a. Name of decedent;
  b. Date of cremation;
  c. Name and address of crematory; and
  d. Signature of crematory manager or person acting as crematory manager.

(6) 'Cremated remains' means all human remains recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions.

(7) 'Cremation' means the technical process, using intense heat and flame, that reduces human remains to bone fragments. Cremation includes the processing and may include the pulverization of the bone fragments.

(8) 'Cremation chamber' means the enclosed space within which the cremation process takes place. Cremation chambers covered by this Article shall be used exclusively for the cremation of human remains.

(9) 'Cremation container' means the container in which the human remains are transported to the crematory or placed therein upon arrival for storage and placement in a cremation chamber for cremation. A cremation container shall comply with all of the following standards:
  a. Be composed of readily combustible materials suitable for cremation;
  b. Be able to be closed in order to provide a complete covering for the human remains;
  c. Be resistant to leakage or spillage;
  d. Be rigid enough for handling with ease;
  e. Be able to provide protection for the health, safety, and personal integrity of crematory personnel; and
  f. Be easily identifiable. The covering of the cremation container shall contain the following information:
    1. The name of the decedent;
    2. The date of death;
    3. The sex of the decedent; and
    4. The age at death of the decedent.

(10) 'Cremation interment container' means a rigid outer container composed of concrete, steel, fiberglass, or some similar material in which an urn is placed prior to being interred in the ground and which is designed to withstand prolonged exposure to the elements and to support the earth above the urn.

(11) 'Crematory' or 'crematorium' means the building or buildings or portion of a building on a single site that houses the cremation equipment, the holding and processing facilities, the business office, and other parts of the crematory business. A crematory must comply

with all applicable public health and environmental laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board.

(12) 'Crematory licensee' means the individual or legal entity that is licensed by the Board to operate a crematory and perform cremations.

(13) 'Crematory manager' means the person who is responsible for the management and operation of the crematory. A crematory manager must be licensed to practice funeral directing or funeral service and must also be qualified as a crematory technician, or for crematories licensed after January 1, 2004, must obtain a crematory manager permit issued by the Board. In order to receive a crematory manager permit, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Have completed with a grade of "C" or higher a course in pathology at a mortuary science college approved by the Board or accredited by the American Board of Funeral Service Education.

d. Be qualified as a crematory technician.

e. Have passed an oral or written examination administered by the Board on the following subjects: pathology, universal precautions, and the laws and rules of the Board of Funeral Service and other agencies dealing with the cremation of dead human bodies and the disposition of cremated remains.

Notwithstanding any other provision of law, a crematory that is licensed by the Board prior to January 1, 2004, and as of that date is not managed by a crematory manager who is licensed to practice funeral directing or funeral service, or who has a crematory manager permit, may continue to be managed by a crematory manager who is not licensed to practice funeral directing or funeral service or who does not have a crematory manager permit so long as there is no sale, transfer, devise, bequest, gift, or any other disposal of a controlling interest in the crematory and the crematory does not arrange cremations directly with the public.

(14) 'Crematory technician' means any employee of a crematory licensee who has a certificate confirming that the crematory technician has attended a training course approved by the Board.

(15) 'Final disposition' means the cremation and the ultimate interment, entombment, inurnment, or scattering of the cremated remains or the return of the cremated remains by the crematory licensee to the authorizing agent or such agent's designee as provided in this Article. Upon the written direction of the authorizing agent, cremated remains may take various forms.

(16) 'Holding and processing facility' means an area or areas that are designated for the retention of human remains prior to, and the retention and processing of cremated remains after, cremation; that comply with all applicable public health and environmental laws; preserve the health and safety of the crematory technician and other personnel of the crematory; and that are secure from access by anyone other than authorized persons. A holding facility and processing facility must be located in a crematory.

(17) 'Human remains' means the body of a deceased person, including a separate human fetus, regardless of the length of gestation, or body parts.

(18) 'Niche' means a compartment or cubicle for the memorialization or final disposition of an urn or container containing cremated remains.

(19) 'Processing' means the removal of bone fragments from the cremation chamber for the reduction in size, labeling and packaging, and placing in an urn or temporary container.

(20) 'Pulverization' means the reduction of identifiable or unidentifiable bone fragments after the completion of the cremation to granulated particles by mechanical means.

(21) 'Scattering area' means an area permitted by North Carolina law including, but not limited to, an area designated by a cemetery and located on dedicated cemetery property where cremated remains that have been removed from their container can be mixed with or placed on top of the soil or ground cover.

(22) 'Temporary container' means a receptacle for cremated remains, usually composed of cardboard, plastic, or similar material which can be closed in a manner so as to prevent the leakage or spillage of the cremated remains or the entrance of foreign material and which is a single container of sufficient size to hold the cremated remains until an urn is acquired or the cremated remains are scattered.

(23) 'Urn' means a receptacle designed to permanently encase the cremated remains.

"§ 90-210.42. Crematory Authority established.

(a) The North Carolina Crematory Authority is established as a Committee within the Board. The Crematory Authority shall suggest rules to the Board for the carrying out and enforcement of the provisions of this Article.

(b) The Crematory Authority shall initially consist of five members appointed by the Governor and two members of the Board appointed by the Board. The Governor may consider a list of recommendations from the Cremation Association of North Carolina.

(c) The initial terms of the members of the Crematory Authority shall be staggered by the appointing authorities so that the terms of three members (two of which shall be appointees of the Governor) expire December 31, 1991, the terms of two members (both of which shall be appointees of the Governor) expire December 31,

1992, and the terms of the remaining two members (one of which shall be an appointee of the Governor) expire December 31, 1993.

As the terms of the members appointed by the Governor expire, their successors shall be elected from among a list of nominees in an election conducted by the Board in which all licensed crematory operators are eligible to vote. The Board may conduct the election for members of the Crematory Authority simultaneously with the election for members of the Board or at any other time. The Board shall prescribe the procedures and establish the time and date for nominations and elections to the Crematory Authority. A nominee who receives a majority of the votes cast shall be declared elected. The Board shall appoint the successors to the two positions for which it makes initial appointments pursuant to this section.

The terms of the elected members of the Crematory Authority shall be three years. The terms of the members appointed by the Board, including the members initially appointed pursuant to this subsection, shall be coterminous with their terms on the Board. Any vacancy occurring in an elective seat shall be filled for the unexpired term by majority vote of the remaining members of the Crematory Authority. Any vacancy occurring in a seat appointed by the Governor shall be filled by the Governor. Any vacancy occurring in a seat appointed by the Board shall be filled by the Board.

(d) The members of the Crematory Authority shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 93B-5 for all time actually spent upon the business of the Crematory Authority. All expenses, salaries and per diem provided for in this Article shall be paid from funds received ~~under the provisions of this Article and Article 13A~~ and shall in no manner be an expense to the State.

(e) The Crematory Authority shall select from its members a chairman, a vice chairman and a secretary who shall serve for one year or until their successors are elected and qualified. No two offices may be held by the same person. The Crematory Authority, with the concurrence of the Board, shall have the authority to engage adequate staff as deemed necessary to perform its duties.

(f) The Crematory Authority shall hold at least one meeting in each year. In addition, the Crematory Authority may meet as often as the proper and efficient discharge of its duties shall require. ~~Five~~ Three members shall constitute a quorum.

"§ 90-210.43. Licensing and inspection.

~~(a) Any person doing business in this State, or any cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity may erect, maintain and conduct a crematory in this State and may provide the necessary appliances and facilities for the cremation of human remains, provided that such person has secured a license as a crematory operator in accordance with the provisions of this Article.~~

~~(b) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment that is zoned commercial or industrial, or at any other location consistent with local zoning regulations.~~

~~(c) Application for a license as a crematory operator shall be made on forms furnished and prescribed by the Board. The Board shall examine the premises and~~

~~structure to be used as a crematory and shall issue a renewable license to the crematory operator if the applicant meets all the requirements and standards of the Board and the requirements of this Article.~~

~~(d) Every application for licensure shall identify the individual who is responsible for overseeing the management and operation of the crematory. The crematory operator shall keep the Board informed at all times of the name and address of the manager.~~

~~(d1) All licenses shall expire on the last day of December of each year. A license may be renewed without paying a late fee on or before the first day of February immediately following expiration. After that date, a license may be renewed by paying a late fee as provided in G.S. 90-210.48 in addition to the annual renewal fee. Licenses that remain expired six months or more require a new application for renewal. Licenses are not transferable. A new application for a license shall be made to the Board within 30 days following a change of ownership of more than fifty percent (50%) of the business.~~

~~(e) No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and under the limitations provided in this Article, or unless otherwise permitted by statute.~~

~~(f) Whenever the Board finds that an owner, partner, manager, member, or officer of a crematory operator or an applicant to become a crematory operator, or that any agent or employee of a crematory operator or an applicant to become a crematory operator, with the direct or implied permission of such owner, partner, manager, member, or officer, has violated any provision of this Article, or is guilty of any of the following acts, and when the Board also finds that the crematory operator or applicant has thereby become unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license, in accordance with the procedures of Chapter 150B:~~

- ~~(1) Conviction of a felony or a crime involving fraud or moral turpitude.~~
- ~~(2) Fraud or misrepresentation in obtaining or renewing a license or in the practice of cremation.~~
- ~~(3) False or misleading advertising.~~
- ~~(4) Gross immorality, including being under the influence of alcohol or drugs while performing cremation services.~~
- ~~(5) Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been cremated or otherwise disposed of.~~
- ~~(6) Violating or cooperating with others to violate any of the provisions of this Article or of the rules of the Board.~~
- ~~(7) Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies.~~
- ~~(8) Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully~~

~~entitled to the custody thereof, except as provided in G.S. 90-210.47(e).~~

~~(9) Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.~~

~~In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000).~~

~~(g) The Board and Crematory Authority may hold hearings in accordance with the provisions of this Article and Chapter 150B. Any such hearing shall be conducted jointly by the Board and the Crematory Authority. The Board and the Crematory Authority shall jointly constitute an "agency" under Article 3A of Chapter 150B of the General Statutes with respect to proceedings initiated pursuant to this Article. The Board is empowered to regulate and inspect crematories and crematory operators and to enforce as provided by law the provisions of this Article and the rules adopted hereunder. Any crematory that, upon inspection, is found not to meet any of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain whether the deficiency or other violation has been corrected.~~

~~In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation or proceeding conducted by it or conducted jointly with the Crematory Authority. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the President of the Board for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor.~~

(a) Any person doing business in this State, or any cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization, or any other entity may erect, maintain, and operate a crematory in this State and may provide the necessary employees, facilities, structure, and equipment for the cremation of human remains, provided that the person or entity has secured a license as a crematory licensee in accordance with this Article.

(b) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment that is zoned commercial or industrial, or at any other location consistent with local zoning and environmental regulations.

(c) Application for a license as a crematory licensee shall be made on forms furnished and prescribed by the Board. The Board shall inspect the premises, facilities, structure, and equipment to be used as a crematory, confirm that the crematory manager's and crematory technician's educational certificate is valid, and issue a renewable license to the crematory licensee if the applicant meets all the requirements and standards of the Board and the requirements of this Article.

(d) Every application for licensure shall identify the crematory manager and all crematory technicians employed by the crematory licensee providing that nothing in this Article shall prohibit the designation and identification by the crematory licensee of one individual to serve as a crematory manager and crematory technician. Each crematory licensed in North Carolina shall employ on a full-time basis at least one crematory technician. Every application for licensure and renewal thereof shall include all crematory technicians' educational certificates. The crematory licensee shall keep the Board informed at all times of the names and addresses of the crematory manager and all crematory technicians. In the event a licensee is in the process of replacing its only crematory technician at the time of license renewal, the licensee may continue to operate the crematory for a reasonable time period not to exceed 180 days.

(e) All licenses and permits shall expire on the last day of December of each year. A license or permit may be renewed without paying a late fee on or before the first day of February immediately following expiration. After that date, a license or permit may be renewed by paying a late fee as provided in G.S. 90-210.52 in addition to the annual renewal fee. Licenses and permits that remain expired six months or more require a new application for renewal. Licenses and permits are not transferable. A new application for a license or permit shall be made to the Board within 30 days following a change of ownership of more than fifty percent (50%) of the business.

(f) No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization, or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and operated by a crematory licensee subject to the restrictions and limitations of this Article or unless otherwise permitted by statute.

(g) Whenever the Board finds that an owner, partner, crematory manager, member, officer, or any crematory technician of a crematory licensee or any applicant to become a crematory licensee, or that any authorized employee, agent, or representative has violated any provision of this Article, or is guilty of any of the following acts, and when the Board also finds that the crematory operator or applicant has thereby become unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license, in accordance with Chapter 150B of the General Statutes:

(1) Conviction of a felony or a crime involving fraud or moral turpitude.

(2) Fraud or misrepresentation in obtaining or renewing a license or in the practice of cremation.

(3) False or misleading advertising.

(4) Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this subdivision shall not be construed to prohibit general advertising by the licensee.

(5) Employment directly or indirectly of any agent, assistant, or other person on a part-time or full-time basis or on commission for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee.

(6) The direct or indirect payment or offer of payment of a commission by the licensee or the licensee's agent, assistant, or employees for the purpose of securing business.

(7) Gross immorality, including being under the influence of alcohol or drugs while performing cremation services.

(8) Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material published or caused to be published by the licensee.

(9) Failing to treat a dead human body with respect at all times.

(10) Violating or cooperating with others to violate any of the provisions of this Article or of the rules of the Board.

(11) Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of dead human bodies.

(12) Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully entitled to the custody thereof, except as provided in G.S. 90-210.51(e).

(13) Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

(14) Practicing funeral directing, embalming, or funeral service without a license.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than five thousand dollars ($5,000).

(h) Where the Board finds a licensee is guilty of one or more of the acts or omissions listed in subsection (g) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150B of the General Statutes. In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand ($5,000) in conjunction with the probation.

(i) The Board may hold hearings in accordance with the provisions of this Article and Chapter 150B of the General Statutes. The Board shall conduct any such hearing. The Board shall constitute an "agency" under Article 3A of Chapter 150B of the General Statutes with respect to proceedings initiated pursuant to this Article. The Board is empowered to regulate and inspect crematories and crematory licensees and to enforce as provided by law the provisions of this Article and the rules adopted hereunder. Any crematory that, upon inspection, is found not to meet any of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain whether the deficiency or other violation has been corrected.

In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation, or proceeding conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas, and other papers given to them by the President of the Board for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor.

"**§ 90-210.44. Authorizing agent.**

(a) The following person, in the priority list below, shall have the right to serve as an "authorizing agent":

(1) An individual at least 18 years of age may authorize the cremation and disposition of the individual's own dead body in a written will, pursuant to health care power of attorney to the extent provided in Article 3 of Chapter 32 of the General Statues, pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old. When an individual has authorized his or her own cremation and disposition in accordance with this subsection, the individual or institution designated by that individual shall act as the authorizing agent for that individual.

(2) If a decedent has left no written authorization for the cremation and disposition of the decedent's body as permitted under subdivision (1) of this subsection, the following competent persons in the order listed may authorize the type, method, place, cremation, and disposition of the decedent's body:

(a) The surviving spouse.

(b) A majority of the surviving children who are at least 18 years of age and can be located after reasonable efforts.

(c) The surviving parents.

(d) A majority of the surviving siblings who are at least 18 years of age and can be located after reasonable efforts.

(e) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate who are at least 18 years of age and can be located after reasonable efforts.

(f) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the cremation and disposition.

(g) In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent may serve as the authorizing agent.

(h) In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with making arrangements for the final disposition of the decedent, a representative of such institution may serve as the authorizing agent in the absence of any of the above.

(i) In the absence of any of the above, any person willing to assume responsibility as authorizing agent, as specified in this act.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to cause or prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63.

(b) A person who does not exercise his or her right to dispose of the decedent's body under subdivision (a)(2) of this section within five days of notification or 10 days from date of death, whichever is earlier, shall be deemed to have waived his or her right to authorize disposition of the decedent's body or to contest disposition in accordance with this section.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the cremation and disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the cremation and disposition, a person listed in subdivision (a)(2) of this section may authorize the cremation and disposition as if the individual were deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes.

"**§ 90-210.45. Authorization to cremate.**

(a) A crematory licensee shall not cremate human remains until it has received a cremation authorization form signed by an authorizing agent. The cremation authorization form shall be prescribed by the Board and shall contain at a minimum the following information:

(1) The identity of the human remains and confirmation that the human remains are in fact the individual so named.

(2) The time and date of death of the decedent.

(3) The name and address of the funeral establishment and/or the funeral director that obtained the cremation authorization.

(4) The name and address of the crematory to be in receipt of the human remains for the purpose of cremation.

(5) The name and address of the authorizing agent, the relationship between the authorizing agent and the decedent, and the date and time of signature of the authorizing agent.

(6) A representation that the authorizing agent does in fact have the right to authorize the cremation of the decedent and that the authorizing agent is not aware of any living person who has a superior priority right to that of the authorizing agent, as set forth in G.S. 90-210.44. Or, in the event that there is another living person who does have a superior priority right to that of the authorizing agent, a representation that the authorizing agent has made all reasonable efforts to contact such person, has been unable to do so, and that the authorizing agent has no reason to believe that such person would object to the cremation of the decedent.

(7) A representation that the authorizing agent has either disclosed the location of all living persons with an equal right to that of the authorizing agent, as set forth in G.S. 90-201.44, or does not know the location of any other living person with an equal right to that of the authorizing agent.

(8) Authorization for the crematory to cremate the human remains, including authorization to process or pulverize the cremated remains.

(9) A representation that the human remains do not contain a pacemaker or any other material or implant that may be potentially hazardous to the person performing the cremation.

(10) The name of the person authorized to receive the cremated remains from the crematory licensee.

(11) The manner in which final disposition of the cremated remains is to take place, if known. If the cremation authorization form does not specify final disposition in a grave, crypt, niche, or scattering area, then the form shall indicate that the cremated remains will be held by the crematory licensee for 30 days before they are disposed of, unless they are received from the crematory licensee prior to that time, in person, by the authorizing agent or his designee.

(12) The signature of the authorizing agent attesting to the accuracy of all representations contained on the cremation authorization form, except as set forth in subsection (b) of this section.

(13) If a cremation authorization form is being executed on a preneed basis, the cremation authorization form shall contain the disclosure required by G.S. 90-210.46. The authorizing agent may specify in writing religious practices that conflict with Article 13 of this Chapter. The crematory licensee and funeral director shall observe those religious practices except where they interfere with cremation in a licensed

crematory as specified under G.S. 90-210.43 or the required documentation and record keeping.

(14) A licensed funeral director of the funeral establishment or crematory licensee that received the cremation authorization form shall also sign the cremation authorization form. Such individual shall not be responsible for any of the representations made by the authorizing agent, unless such individual has actual knowledge to the contrary, except for the information requested by subdivisions (a)(1), (2), (3), (4), and (9) of this section, which shall be considered to be representations of the individual. In addition, the funeral director shall warrant to the crematory that the human remains delivered to the crematory licensee are the human remains identified on the cremation authorization form with any other documentation required by this State, any county, or any municipality.

(b) An authorizing agent who signs a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth on the cremation authorization form, including that person's authority to order the cremation; except for the information required by subdivisions (a)(4) and (9) of this section, unless the authorizing agent has actual knowledge to the contrary. An authorizing agent signing a cremation authorization form shall be personally and individually liable for all damages occasioned thereby and resulting therefrom.

(c) A crematory licensee shall have the legal right to cremate human remains upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability for a crematory licensee that cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization, except for such crematory licensee's gross negligence, provided that the crematory licensee performs such functions in compliance with the provisions of this Article. There shall be no liability for a funeral establishment or licensee thereof that causes a crematory licensee to cremate human remains pursuant to such authorization, except for gross negligence, provided that the funeral establishment and licensee thereof and crematory licensee perform their respective functions in compliance with the provisions of this section.

(d) After the authorizing agent has executed a cremation authorization form and prior to the commencement of the cremation, the authorizing agent may revoke the authorization and instruct the crematory licensee to cancel the cremation and to release or deliver the human remains to another crematory licensee or funeral establishment. Such instructions shall be provided to the crematory licensee in writing. A crematory licensee shall honor any instructions given to it by an authorizing agent under this section, provided that it receives such instructions prior to commencement of the cremation of the human remains.

"**§ 90-210.46. Preneed cremation arrangements.**

(a) Any person, on a preneed basis, may authorize the person's own cremation and the final disposition of the person's cremated remains by executing, as the authorizing agent, a cremation authorization form on a preneed basis and having the

form signed by two witnesses. The person shall retain a copy of this form, and a copy shall be sent to the funeral establishment and/or the crematory licensee. Any person shall have the right to transfer or cancel this authorization at any time prior to the person's death by destroying the executed cremation authorization form and providing written notice to the party or parties that received the cremation authorization form.

(b) Any cremation authorization form executed by an individual as the individual's own authorizing agent on a preneed basis shall contain the following disclosure, which shall be completed by the authorizing agent:

/ / I do not wish to allow any of my survivors the option of canceling my cremation and selecting alternative arrangements, regardless of whether my survivors deem such a change to be appropriate.

/ / I wish to allow only the survivors whom I have designated below the option of canceling my cremation and selecting alternative arrangements or continuing to honor my wishes for cremation and purchasing services and merchandise if they deem such a change to be appropriate.

(c) Except as provided in subsection (b) of this section, at the time of the death of a person who has executed, as the authorizing agent, a cremation authorization form on a preneed basis, any person in possession of the executed form, and any person charged with making arrangements for the disposition of the decedent's human remains who has knowledge of the existence of the executed form, shall use the person's best efforts to ensure that the decedent's human remains are cremated and that the final disposition of the cremated remains is in accordance with the instructions contained on the cremation authorization form.

(d) If a crematory licensee is in possession of a completed cremation authorization form, executed on a preneed basis, and the crematory licensee is in possession of the designated human remains, then the crematory licensee shall be required to cremate the human remains and dispose of the human remains according to the instructions contained on the cremation authorization form. A crematory licensee that complies with the preneed cremation authorization form under these circumstances may do so without any liability. A funeral establishment or licensee thereof that causes a crematory licensee to act in accordance with the preneed cremation authorization form under these circumstances may do so without any liability.

(e) Any preneed contract sold by, or preneed arrangements made with a funeral establishment, that includes a cremation shall specify the final disposition of the cremated remains, pursuant to G.S. 90-210.50. In the event that no different or inconsistent instructions are provided to the crematory licensee by the authorizing agent at the time of death, the crematory licensee shall be authorized to release or dispose of the cremated remains as indicated in the preneed agreement. Upon compliance with the terms of the preneed agreement, the crematory licensee, and any funeral establishment or licensee thereof who caused the crematory licensee to act in compliance with the terms of the preneed agreement, shall be discharged from any legal obligation concerning such cremated remains.

(f) The provisions of this section shall not apply to any cremation authorization form or preneed contract executed prior to the effective date of this act. Any funeral establishment, however, with the written approval of the authorizing agent or person who executed the preneed contract, may designate that such cremation authorization form or preneed contract shall be subject to this act.

~~"§ 90-210.44. Authorization and record keeping.~~

~~The Board shall establish requirements for record keeping, authorizations, and cremation reports. It shall be a violation of this Article for any crematory operator to fail to comply with the requirements.~~

"**§ 90-210.47. Record keeping.**

(a) The crematory licensee shall furnish to the person who delivers such human remains to the crematory licensee a receipt, signed by both the crematory licensee and the person who delivers the human remains, showing the date and time of the delivery; the type of casket or cremation container that was delivered; the name of the person from whom the human remains were received and the name of the funeral establishment or other entity with whom such person is affiliated; the name of the person who received the human remains on behalf of the crematory licensee; and the name of the decedent. The crematory licensee shall retain a copy of this receipt in its permanent records for three years.

(b) Upon its release of cremated remains, the crematory licensee shall furnish to the person who receives such cremated remains from the crematory licensee a receipt, signed by both the crematory licensee and the person who receives the cremated remains, showing the date and time of the release; the name of the person to whom the cremated remains were released and the name of the funeral establishment, cemetery, or other entity with whom such person is affiliated; the name of the person who released the cremated remains on behalf of the crematory licensee; and the name of the decedent. The crematory shall retain a copy of this receipt in its permanent records for three years.

(c) A crematory licensee shall maintain at its place of business a record of all forms required by the Board of each cremation that took place at its facility for three years.

(d) The crematory licensee shall maintain a record for three years of all cremated remains disposed of by the crematory licensee in accordance with G.S. 90-210.46(d).

(e) Upon completion of the cremation, the crematory licensee shall issue a certificate of cremation.

(f) All records that are required to be maintained under this Article shall be subject to inspection by the Board or its agents upon request.

"**§ 90-210.48. Cremation containers.**

(a) No crematory licensee shall make or enforce any rules requiring that any human remains be placed in a casket before cremation or that human remains be cremated in a casket, nor shall any crematory licensee refuse to accept human remains for cremation for the reason that they are not in a casket.

(b) No crematory licensee shall make or enforce any rules requiring that any cremated remains be placed in an urn or receptacle designed to permanently encase the cremated remains after the cremation process has been performed.

~~"§ 90-210.45. Cremation procedures.~~

~~(a) No human body shall be cremated before the crematory operator receives a death certificate signed by the attending physician or an authorization for cremation signed by a medical examiner.~~

~~(b) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious or communicable and dangerous disease as listed by the Commission of Health Services pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred. In the event such death comes under the jurisdiction of the medical examiner, the human remains shall not be received by the crematory operator until authorization to cremate has been received in writing from the medical examiner of the county in which the death occurred. In the event the crematory operator is authorized to perform funerals as well as cremation, this restriction on the receipt of human remains shall not be applicable.~~

~~(c) No unauthorized person shall be permitted in the crematory area while any human remains are in the crematory area awaiting cremation, being cremated, or being removed from the cremation chamber. Relatives of the deceased, the authorizing agent, medical examiners and law enforcement officers in the execution of their duties shall be authorized to have access to the holding facility and crematory facility.~~

~~(c1) Human remains shall be cremated only while enclosed in a cremation container.~~

~~(d) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden.~~

~~(d1) Every crematory shall have a holding facility, within or adjacent to the crematory, designated for the retention of human remains prior to cremation. The holding facility must comply with any applicable public health laws and rules and must meet all of the standards established pursuant to rules adopted by the Board.~~

~~(e) Crematory operators shall comply with standards established by the Board for the reduction and pulverization of human remains by the cremation process.~~

"**§ 90-210.49. Cremation procedures.**

(a) In deaths certified by the attending physician, the body shall not be cremated before the crematory licensee receives a death certificate signed by the attending physician, which shall contain at a minimum the following information:

(1) Decedent's name;
(2) The date of death;
(3) Date of birth;
(4) Sex;
(5) The place of death;
(6) Facility name (if not institution, give street and number);
(7) County of death;
(8) City of death; and
(9) Time of death (if known).

(b) When required by G.S. 130A-388 and the rules adopted pursuant to that section or by successor statute and the rules pursuant to it, a cremation authorization form signed by a medical examiner shall be received by the crematory prior to cremation.

(c) In deaths coming under full investigation by the Office of the Chief Medical Examiner, a burial-transit permit/cremation authorization form must be received by the crematory before cremation.

(d) No body shall knowingly be cremated with a pacemaker or defibrillator or other potentially hazardous implant or condition in place. The authorizing agent for the cremation of the human remains shall be responsible for taking all necessary steps to ensure that any pacemaker or defibrillator or other potentially hazardous implant or condition is removed or corrected prior to cremation. If an authorizing agent informs the funeral director and the crematory licensee on the cremation authorization form of the presence of a pacemaker or defibrillator or other potentially hazardous implant or condition in the human remains, then the funeral director shall be responsible for ensuring that all necessary steps have been taken to remove the pacemaker or defibrillator or other potentially hazardous implant or to correct the hazardous condition before delivering the human remains to the crematory.

(e) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious, or communicable and dangerous disease as listed by the Commission of Health Services pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred.

(f) No unauthorized person shall be permitted in view of the cremation chamber or in the holding and processing facility while any human remains are being removed from the cremation container, processed, or pulverized. Relatives of the deceased and their invitees, the authorizing agent and the agent's invitees, medical examiners, Inspectors of the North Carolina Board of Funeral Service, and law enforcement officers in the execution of their duties shall be authorized to have access to the crematory area, subject to the rules adopted by the crematory licensee governing the safety of such individuals.

(g) Human remains shall be cremated only while enclosed in a cremation container. Upon completion of the cremation, and insofar as is possible, all of the recoverable residue of the cremation process shall be removed from the cremation chamber. Insofar as is possible, all residue of the cremation process shall then be separated from any foreign residue or anything else other than bone fragments and then be processed by pulverization so as to reduce the cremated remains to unidentifiable particles. Any foreign residue and anything other than the particles of the cremated remains shall be removed from the cremated remains as far as possible and shall be disposed of by the crematory licensee. This section does not apply where law otherwise provides for commingling of human remains. The fact that there is incidental and unavoidable residue in the cremation chamber used in a prior cremation is not a violation of this subsection.

(h) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden.

(i) Every crematory shall have a holding and processing facility, within the crematory, designated for the retention of human remains prior to cremation. The holding and processing facility must comply with any applicable public health laws and rules and must meet all of the standards established pursuant to rules adopted by the Board.

(j) Crematory licensees shall comply with standards established by the Board for the processing and pulverization of human remains by cremation.

(k) Nothing in this Article shall require a crematory licensee to perform a cremation that is impossible or impractical to perform.

(l) The cremated remains with proper identification shall be placed in a temporary container or the urn selected or provided by the authorizing agent. The temporary container or urn contents shall not be contaminated with any other object, unless specific authorization has been received from the authorizing agent or as provided in subsection (g) of this section.

(m) If the cremated remains are greater than the dimensions of a temporary container or urn, the excess cremated remains shall be returned to the authorizing agent or its representative in a separate container or urn.

(n) If the cremated remains are to be shipped, the temporary container or urn shall be packed securely in a suitable shipping container that complies with the requirements of the shipper. Cremated remains shall be shipped only by a method which has an internal tracing system available and which provides a receipt signed by the person accepting delivery, unless otherwise authorized in writing by the authorizing agent. Cremated remains shall be shipped to the proper address as stated on the cremation authorization form signed by the authorizing agent.

~~"§ 90-210.46. Disposition of cremated remains.~~

~~(a) The authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. The crematory operator may store or retain cremated remains as directed by the authorizing agent. Records of retention and disposition of cremated remains shall be kept by the crematory operator pursuant to G.S. 90-210.44.~~

~~(b) The authorizing agent is responsible for the disposition of the cremated remains. If, after a period of 30 days from the date of cremation, the authorizing agent or his representative has not specified the ultimate disposition or claimed the cremated remains, the crematory operator or the person in possession of the cremated remains may dispose of the cremated remains only in a manner permitted in this section. The authorizing agent shall be responsible for reimbursing the crematory operator for all reasonable expenses incurred in disposing of the cremated remains pursuant to this section. A record of such disposition shall be made and kept by the person making such disposition. Upon disposing of cremated remains in accordance with this section, the crematory operator or person in possession of the cremated remains shall be discharged from any legal obligation or liability concerning such cremated remains.~~

~~(c) In addition to the disposal of cremated remains in a crypt, niche, grave, or scattering garden located in a dedicated cemetery, or by scattering over uninhabited public land, the sea or other public waterways pursuant to subsection (f) of this section, cremated remains may be disposed of in any manner on the private property of a consenting owner, upon direction of the authorizing agent. If cremated remains are to be disposed of by the crematory operator on private property, other than dedicated cemetery property, the authorizing agent shall provide the crematory operator with the written consent of the property owner.~~

~~(d) Except with the express written permission of the authorizing agent no person may:~~

~~(1) Dispose of or scatter cremated remains in such a manner or in such a location that the cremated remains are commingled with those of another person. This subdivision shall not apply to the scattering of cremated remains at sea or by air from individual closed containers or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for such purposes.~~

~~(2) Place cremated remains of more than one person in the same closed container. This subdivision shall not apply to placing the cremated remains of members of the same family in a common closed container designed for the cremated remains of more than one person.~~

~~(e) Cremated remains shall be delivered by the crematory operator to the individual specified by the authorizing agent on the cremation authorization form. The representative of the crematory operator and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased, and the date, time, and place of the receipt. After this delivery, the cremated remains may be transported in any manner in this State, without a permit, and disposed of in accordance with the provisions of this Article.~~

~~(f) Cremated remains may be scattered over uninhabited public land, a public waterway or sea, subject to health and environmental standards, or on the private property of a consenting owner pursuant to subsection (c) of this section. A person may utilize a boat or airplane to perform such scattering. Cremated remains shall be removed from their closed container before they are scattered.~~

"**§ 90-210.50. Final disposition of cremated remains.**

(a) The authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. The crematory licensee may store or retain cremated remains as directed by the authorizing agent. Records of retention and disposition of cremated remains shall be kept by the crematory licensee pursuant to G.S. 90-210.47.

(b) The authorizing agent is responsible for the disposition of the cremated remains. If, after a period of 30 days from the date of cremation, the authorizing agent or the agent's representative has not specified the final disposition or claimed the cremated remains, the crematory licensee or the person in possession of the cremated remains may dispose of the cremated remains only in a manner permitted in this section. The authorizing agent shall be responsible for reimbursing the crematory licensee for all

reasonable expenses incurred in disposing of the cremated remains pursuant to this section. A record of such disposition shall be made and kept by the person making the disposition. Upon disposing of cremated remains in accordance with this section, the crematory licensee or person in possession of the cremated remains shall be discharged from any legal obligation or liability concerning such cremated remains.

(c) In addition to the disposal of cremated remains in a crypt, niche, grave, or scattering garden located in a dedicated cemetery, or by scattering over uninhabited public land, the sea, or other public waterways pursuant to subsection (f) of this section, cremated remains may be disposed of in any manner on the private property of a consenting owner, upon direction of the authorizing agent. If cremated remains are to be disposed of by the crematory licensee on private property, other than dedicated cemetery property, the authorizing agent shall provide the crematory licensee with the written consent of the property owner.

(d) Except with the express written permission of the authorizing agent, no person may:

(1) Dispose of or scatter cremated remains in such a manner or in such a location that the cremated remains are commingled with those of another person. This subdivision shall not apply to the scattering of cremated remains at sea or by air from individual closed containers or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for such purposes.

(2) Place cremated remains of more than one person in the same closed container. This subdivision shall not apply to placing the cremated remains of members of the same family in a common closed container designed for the cremated remains of more than one person with the written consent of the family.

(e) Cremated remains shall be released by the crematory licensee to the individual specified by the authorizing agent on the cremation authorization form. The representative of the crematory licensee and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased, and the date, time, and place of the receipt, and contain a representation that the handling of the final disposition will be in a proper manner. After this delivery, the cremated remains may be transported in any manner in this State, without a permit, and disposed of in accordance with the provisions of this Article.

(f) Cremated remains may be scattered over uninhabited public land, over a public waterway or sea, subject to health and environmental standards, or on the private property of a consenting owner pursuant to subsection (c) of this section. A person may utilize a boat or airplane to perform such scattering. Cremated remains shall be removed from their closed container before they are scattered.

~~"§ 90-210.47. Liability.~~

~~(a) Any person signing a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth in the cremation authorization form, including the identity of the deceased whose remains are sought to be cremated and that person's authority to order such cremation.~~

~~(b) A crematory operator shall have authority to cremate human remains only upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability of a crematory operator that cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization.~~

~~(c) A crematory operator shall not be responsible or liable for any valuables delivered to the crematory operator with human remains.~~

~~(d) A crematory operator shall not be liable for refusing to accept a body or to perform a cremation until it receives a court order or other suitable confirmation that a dispute has been settled if:~~

~~(1) It is aware of any dispute concerning the cremation of human remains;~~

~~(2) It has a reasonable basis for questioning any of the representations made by the authorizing agent; or~~

~~(3) For any other lawful reason.~~

~~(e) If a crematory operator is aware of any dispute concerning the release or disposition of the cremated remains, the crematory operator may refuse to release the cremated remains until the dispute has been resolved or the crematory operator has been provided with a court order authorizing the release or disposition of the cremated remains. A crematory operator shall not be liable for refusing to release or dispose of cremated remains in accordance with this subsection.~~

"**§ 90-210.51. Limitation of liability.**

(a) Any person signing a cremation authorization form as authorizing agent shall be deemed to warrant the truthfulness of any facts set forth in the cremation authorization form, including the identity of the deceased whose remains are sought to be cremated and that person's authority to order such cremation.

(b) A crematory licensee shall have authority to cremate human remains only upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability of a crematory licensee that cremates human remains pursuant to such authorization or that releases or disposes of the cremated remains pursuant to such authorization. A crematory licensee and funeral establishment or licensee thereof who causes the crematory licensee to act shall have no liability for the final disposition or manner in which the cremated remains are handled after the cremated remains are released in accordance with the directions of the authorizing agent.

(c) A crematory licensee shall not be responsible or liable for any valuables delivered to the crematory licensee with human remains.

(d) A crematory licensee shall not be liable for refusing to accept a body or to perform a cremation until it receives a court order or other suitable confirmation that a dispute has been settled if:

(1) It is aware of any dispute concerning the cremation of human remains;

(2) It has a reasonable basis for questioning any of the representations made by the authorizing agent; or

(3) For any other lawful reason.

(e) If a crematory licensee is aware of any dispute concerning the release or disposition of the cremated remains, the crematory licensee may refuse to release the cremated remains until the dispute has been resolved or the crematory licensee has been provided with a court order authorizing the release or disposition of the cremated remains. A crematory licensee shall not be liable for refusing to release or dispose of cremated remains in accordance with this subsection. A crematory licensee may charge a reasonable storage fee if the dispute is not resolved within 30 days after it is received by the crematory licensee.

~~"§ 90-210.48. Fees.~~

~~(a) The Board may set and collect fees not to exceed the following amounts from licensed crematory operators and applicants:~~

~~(1)~~	~~Licensee application fee~~	~~$400.00~~
~~(2)~~	~~Annual renewal fee~~	~~150.00~~
~~(3)~~	~~Late renewal penalty~~	~~75.00~~
~~(4)~~	~~Re-inspection fee~~	~~100.00~~
~~(5)~~	~~Per cremation fee.~~	~~10.00~~
~~(6)~~	~~Late fee, per cremation.~~	~~10.00~~
~~(7)~~	~~Late fee, cremation report~~	~~75.00 per month.~~

~~(b) The funds collected pursuant to this Article shall become part of the general fund of the Board. The cost of the maintenance of the Crematory Authority shall be deemed a general expense of the Board. The Board shall keep an accurate accounting of all the receipts and expenditures made pursuant to this Article and shall provide a current report of such to the Crematory Authority biannually.~~

"§ 90-210.52. Fees.

(a) The Board may set and collect fees not to exceed the following amounts from crematory licensees, crematory manager permit holders, and applicants:

(1)	Licensee application fee	$400.00
(2)	Annual renewal fee	150.00
(3)	Late renewal fee	75.00
(4)	Reinspection fee	100.00
(5)	Per cremation fee	10.00
(6)	Late fee, per cremation	10.00
(7)	Late fee, cremation report	75.00 per month
(8)	Crematory manager permit application fee	150.00
(9)	Annual crematory manager permit renewal fee	40.00.

(b) The funds collected pursuant to this Article shall become part of the general fund of the Board.

~~"§ 90-210.49. Crematory operator authority.~~

~~(a) A crematory operator may employ a licensed funeral director for the purpose of arranging cremations with the general public, transporting human remains to the crematory, and processing all necessary paper work. Nothing in this provision may be construed to require a licensed funeral director to perform any functions not otherwise required by law to be performed by a licensed funeral director.~~

~~(b) A crematory operator may adopt reasonable rules consistent with this Article for the management and operation of a crematory. Nothing in this subsection may be construed to prevent a crematory operator from adopting rules which are more stringent than the provisions of this Article.~~

~~(c) Nothing in this Article shall prohibit or require the performance of cremations by crematory operators for or directly with the public, or exclusively for or through licensed funeral directors.~~

~~(d) Nothing in this Article may be construed to prohibit a crematory operator from transporting human remains.~~

~~(e) Nothing in this Article may be construed to relieve the holder of a license issued hereunder from obtaining any other licenses or permits required by law.~~

"**§ 90-210.53. Crematory licensee rights.**

(a) A crematory licensee may adopt reasonable rules consistent with this Article for the management and operation of a crematory. Nothing in this subsection may be construed to prevent a crematory licensee from adopting rules which are more stringent than the provisions of this Article.

(b) Nothing in this Article may be construed to relieve the crematory licensee from obtaining any other licenses or permits required by law.

(c) Nothing in this Article shall prohibit or require the performance of cremations by crematory licensees or crematory managers for or directly with the public, or exclusively for or through licensed funeral directors.

~~"§ 90-210.50. Rulemaking, applicability, violations, and prohibitions of Article.~~

~~(a) The Board is authorized to adopt and promulgate such rules for the carrying out and enforcement of the provisions of this Article as may be necessary and as are consistent with the laws of this State and of the United States. The Board shall adopt rules only after consideration of the Crematory Authority's suggested rules pursuant to G.S. 90-210.42(a). The Board may perform such other acts and exercise such other powers and duties as may be provided in this Article, in Article 13A of this Chapter, and otherwise by law and as may be necessary to carry out the powers herein conferred.~~

~~(b) The provisions of this Article shall not apply to the cremation of human remains and medical waste performed by the North Carolina Anatomical Commission, licensed hospitals and medical schools, and the office of the Chief Medical Examiner when the disposition of such human remains and medical waste is the legal responsibility of said institutions.~~

~~(c) A violation of any of the provisions of this Article is a Class 2 misdemeanor.~~

~~(d) No person, firm, or corporation may request or authorize cremation or cremate a dead human body when he has information indicating a crime or violence of any sort in connection with the cause of death unless such information has been conveyed to the State or county medical examiner and permission from the State or county medical examiner to cremate has thereafter been obtained.~~

"**§ 90-210.54. Rulemaking, applicability, violations, and prohibitions of Article.**

(a) The Board is authorized to adopt and promulgate such rules for the carrying out and enforcement of the provisions of this Article as may be necessary and as are consistent with the laws of this State and of the United States. The Board may develop a

Standard Cremation Authorization Form and procedures for its execution that shall be used by the crematory licensee subject to this Article, unless a crematory has its own form approved by the Board. A crematory licensee that uses its own approved cremation authorization form must have the cremation authorization form reapproved if changed or after amendments are made to this Article or the rules adopted by the Board related to cremation authorization forms. The Board may perform such other acts and exercise such other powers and duties as may be provided in this Article, in Article 13A of this Chapter, and otherwise by law and as may be necessary to carry out the powers herein conferred.

(b) The provisions of this Article shall not apply to the cremation of medical waste performed by the North Carolina Anatomical Commission, licensed hospitals and medical schools, and the office of the Chief Medical Examiner when the disposition of such medical waste is the legal responsibility of the institutions.

(c) A violation of any of the provisions of this Article is a Class 2 misdemeanor.

(d) No person, firm, or corporation may request or authorize cremation or cremate human remains when the person, firm, or corporation has information indicating a crime or violence of any sort in connection with the cause of death unless such information has been conveyed to the State or county medical examiner and permission from the State or county medical examiner to cremate human remains has thereafter been obtained."

SECTION 3. G.S. 90-210.20(e1) reads as rewritten:

"(e1) "Funeral chapel" means a chapel or other facility separate from the funeral establishment premises for the primary purpose of reposing of dead human bodies, visitation or funeral ceremony that is owned, operated, or maintained by a funeral establishment or other licensee under this Article, and that does not use the word "funeral" in its name, on a sign, in a directory, in advertising or in any other manner; in which or on the premises of which there is not displayed ~~or offered for sale~~ any caskets or other funeral merchandise; in which or on the premises of which there is not located any ~~funeral business office or a~~ preparation room; ~~in which or on the premises of which no funeral sales, financing, or arrangements are made;~~ and which no owner, operator, employee, or agent thereof represents the chapel to be a funeral establishment.

SECTION 4. G.S. 90-210.22 reads as rewritten:

"**§ 90-210.22. Required meetings of the Board.**

The Board shall hold at least ~~two~~ four meetings in each ~~year at which examinations shall be given to qualified applicants for licenses.~~year. In addition, the Board may meet as often as the proper and efficient discharge of its duties shall require. Five members shall constitute a quorum."

SECTION 5.(a) G.S. 90-210.23(b) reads as rewritten:

"**§ 90-210.23. Powers and duties of the Board.**

...

(b) The Board shall elect from its members a president, a vice-president and a secretary, no two offices to be held by the same person. The president and vice-president and secretary shall serve for one year and until their successors shall be

elected and ~~qualify.~~ qualified. The Board shall have authority to engage adequate staff as deemed necessary to perform its duties."

SECTION 5.(b) G.S. 90-210.23 is amended by adding the following new subsections to read:

"(h1) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing, and sale of real property. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(h2) The Board may employ legal counsel and clerical and technical assistance, and fix the compensation therefor, and incur such other expenses as may be deemed necessary in the performance of its duties and the enforcement of the provisions of this Article or as otherwise required by law and as may be necessary to carry out the powers herein conferred."

SECTION 6.(a) G.S. 90-210.24(a) reads as rewritten:

"**§ 90-210.24. Inspector.**

(a) The Board may appoint one or more agents who shall serve at the pleasure of the Board and who shall have the title "Inspector of the ~~Board of Mortuary Science of North Carolina".~~North Carolina Board of Funeral Service." No person is eligible for appointment as inspector unless at the time of ~~his~~ the appointment ~~he~~ the person is licensed under this Article as a funeral service licensee."

SECTION 6.(b) G.S. 90-210.24 is amended by adding the following new subsection to read:

"(e) The Board's Executive Director shall have all the powers of an Inspector of the North Carolina Board of Funeral Services."

SECTION 7. G.S. 90-210.25 reads as rewritten:

"**§ 90-210.25. Licensing.**

(a) Qualifications, Examinations, Resident Traineeship and Licensure. –

(1) To be licensed for the practice of funeral directing under this Article, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Be a graduate of a Funeral Director Program at a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction, including the subjects set out in sub-part e.1. of this subdivision, as prescribed by a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education.

d. Have completed 12 months of resident traineeship as a funeral director, pursuant to the procedures and conditions set out in

G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.

e. Have passed an oral or written funeral director examination on the following subjects:

1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.
2. Repealed by 1997-399, s. 5.
3. Laws of North Carolina and rules of the Board ~~of Mortuary Science~~ and other agencies dealing with the care, transportation and disposition of dead human bodies.

(2) To be licensed for the practice of embalming under this Article, a person must:

a. Be at least 18 years of age.
b. Be of good moral character.
c. Be a graduate of a mortuary science college approved by the Board.
d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.
e. Have passed an oral or written embalmer examination on the following subjects:

1. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
2. Repealed by 1997-399, s. 6.
3. Laws of North Carolina and rules of the Board ~~of Mortuary Science~~ and other agencies dealing with the care, transportation and disposition of dead human bodies.

(3) To be licensed for the practice of funeral service under this Article, a person must:

a. Be at least 18 years of age.
b. Be of good moral character.
c. Be a graduate of <u>and receive an associate degree from</u> a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education. Have completed a minimum of ~~32~~ <u>60</u> semester hours or ~~48~~ <u>90</u> quarter hours of instruction, including the subjects set out in sub-part e.1. of this subdivision, as prescribed by a mortuary science college approved by the Board

or a school of mortuary science accredited by the American Board of Funeral Service Education.

d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivison c. of this subdivision.

e. Have passed an oral or written funeral service examination on the following subjects:

1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.
2. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
3. Repealed by 1997-399, s. 7.
4. Laws of North Carolina and rules of the Board ~~of Mortuary Science~~ and other agencies dealing with the care, transportation and disposition of dead human bodies.

(4) a. A person desiring to become a resident trainee shall apply to the Board on a form provided by the Board. The application shall state that the applicant is not less than 18 years of age, of good moral character, and is the graduate of a high school or the equivalent thereof, and shall indicate the licensee under whom the applicant expects to train. A person training to become an embalmer may serve under either a licensed embalmer or a funeral service licensee. A person training to become a funeral director may serve under either a licensed funeral director or a funeral service licensee. A person training to become a funeral service licensee shall serve under a funeral service licensee. The application must be sustained by oath of the applicant and be accompanied by the appropriate fee. When the Board is satisfied as to the qualifications of an applicant it shall instruct the secretary to issue a certificate of resident traineeship.

b. When a resident trainee leaves the proctorship of the licensee under whom the trainee has worked, the licensee shall file with the Board an affidavit showing the length of time served with the licensee by the trainee, and the affidavit shall be made a matter of record in the Board's office. The licensee shall deliver a copy of the affidavit to the trainee.

c. A person who has not completed the traineeship and wishes to do so under a licensee other than the one whose name appears on the original certificate may reapply to the Board for ~~approval, without payment of an additional fee.~~approval.

d. A certificate of resident traineeship shall be signed by the resident trainee and upon payment of the renewal fee shall be renewable one year after the date of original registration; but the certificate may not be renewed more than ~~one time.~~ two times. The Board shall mail to each registered trainee at his last known address a notice that the renewal fee is due and that, if not paid within 30 days of the notice, the certificate will be canceled. A ~~penalty,~~ late fee, in addition to the renewal fee, shall be charged for a late renewal, but the renewal of the registration of any resident trainee who is engaged in the active military service of the United States at the time renewal is due may, at the discretion of the Board, be held in abeyance for the duration of that service without penalties. No credit shall be allowed for the 12-month period of resident traineeship that shall have been completed more than ~~three~~ five years preceding the examination for a license.

e. All registered resident trainees shall report to the Board at least once every month during traineeship upon forms provided by the Board listing the work which has been completed during the preceding month of resident traineeship. The data contained in the reports shall be certified as correct by the licensee under whom the trainee has served during the period and by the licensed person who is managing the funeral service establishment. Each report shall list the following:

1. For funeral director trainees, the conduct of any funerals during the relevant time period,
2. For embalming trainees, the embalming of any bodies during the relevant time period,
3. For funeral service trainees, both of the activities named in 1 and 2 of this subsection, engaged in during the relevant time period.

f. To meet the resident traineeship requirements of G.S. 90-210.25(a)(1), G.S. 90-210.25(a)(2) and G.S. 90-210.25(a)(3) the following must be shown by the affidavit(s) of the licensee(s) under whom the trainee worked:

1. That the funeral director trainee has, under supervision, assisted in directing at least 25 funerals during the resident traineeship,
2. That the embalmer trainee has, under supervision, assisted in embalming at least 25 bodies during the resident traineeship,
3. That the funeral service trainee has, under ~~supervision~~ supervision, assisted in directing at least 25 funerals and,

under supervision, assisted in embalming at least 25 bodies during the resident traineeship.

g. The Board may suspend or revoke a certificate of resident traineeship for violation of any provision of this Article.

h. Each sponsor for a registered resident trainee must during the period of sponsorship be actively employed with a funeral establishment. The traineeship shall be a primary vocation of the trainee.

i. Only one resident trainee may register and serve at any one time under any one person licensed under this Article.

j., k. Repealed by Session Laws 1991, c. 528, s. 4.

l. The Board shall register no more than one resident trainee at a funeral establishment that served 100 or fewer families during the 12 months immediately preceding the date of the application, and shall register no more than one resident trainee for each additional 100 families served at the funeral establishment during the 12 months immediately preceding the date of the application.

(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

a. All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

b. The holder of any license issued by the Board who shall fail to renew the same on or before ~~January 31~~February 1 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing

education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom.

c. All licensees now or hereafter licensed in North Carolina shall take continuing education courses ~~of study~~ in subjects relating to the practice of the profession for which they are licensed, to the end that ~~new techniques, scientific and clinical advances, the achievements of research and~~ the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.

d. As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least ~~five~~ 10 hours of continuing education courses, of which the Board may require licensees to take up to three hours specified by the Board and two hours may be self-study. All continuing education courses must be approved by the Board prior to enrollment. A licensee who completes more than ~~five~~ 10 hours in a year may carry over a maximum of ~~five~~ 10 hours as a credit to the following year's requirement. A licensee who is issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year.

e. The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North Carolina, and the Board shall waive the requirement for all licensees who were licensed on or before December 31, 2003, and have been licensed in North Carolina for a continuous period of 25 years or more, for all licensees who are licensed on or after January 1, 2004, who have been licensed for a continuous period of 25 years or more and have attained the age of 60 years, and for all licensees who are, at the time of renewal, members of the General Assembly.

f. The Board shall cause to be established and offered to the licensees, each calendar year, at least ~~five~~ eight hours of continuing education ~~courses in subjects encompassing the license categories of embalming, funeral directing and funeral~~

~~service.~~courses. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.

g. Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee.

h. The Department of Justice may provide a criminal record check to the Board for a person who has applied for a new or renewal license, or certification through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision.

(a1) Inactive Licenses. – Any person holding a license issued by the Board for funeral directing, for embalming, or for the practice of funeral service may apply for an inactive license in the same category as the active license held. The inactive license is renewable annually. Continuing education is not required for the renewal of an inactive license. The only activity that a holder of an inactive license may engage in is to vote pursuant to G.S. 90-210.18(c)(2). The holder of an inactive license may apply for an

active license in the same category, and the Board shall issue an active license if the applicant has completed in North Carolina a total number of hours of accredited continuing education equal to five times the number of years the applicant held the inactive license. No application fee is required for the reinstatement of an active license pursuant to this subsection. The holder of an inactive license who returns to active status shall surrender the inactive license to the Board.

(a2) In order to engage in the practice of funeral directing or funeral service, such a licensee must own, be employed by, or otherwise be an agent of a licensed funeral establishment; except that such a licensee may practice funeral directing or funeral service if:

(1) Employed by a college of mortuary science; or

(2) The licensee:

a. Maintains all of his or her business records at a location made known to the Board and available for inspection by the Board under the same terms and conditions as the business records of a licensed funeral establishment;

b. Complies with rules and regulations imposed on funeral establishments and the funeral profession that are designed to protect consumers, to include, but not be limited to, the Federal Trade Commission's laws and rules requiring General Price Lists and Statements of Goods and Services; and

c. Pays to the Board the funeral establishment license fee required by law and set by the Board.

Nothing in this subdivision shall preclude a licensee from arranging cremations and cremating human remains while employed by a crematory.

(b) Persons Licensed under the Laws of Other Jurisdictions. –

(1) The Board shall grant licenses to funeral directors, embalmers and funeral service licensees, licensed in other states, territories, the District of Columbia, and foreign countries, when it is shown that the applicant holds a valid license as a funeral director, embalmer or funeral service licensee issued by the other jurisdiction, has demonstrated knowledge of the laws and ~~regulations~~ rules governing the profession in North Carolina and has submitted proof of his good moral character; and either that the applicant has continuously practiced the profession in the other jurisdiction for at least three years immediately preceding his application, or the Board has determined that the licensing requirements for the other jurisdiction are substantially similar to those of North Carolina.

(2) The Board shall periodically review the mortuary science licensing requirements of other jurisdictions and shall determine which licensing requirements are substantially similar to the requirements of North Carolina.

(3) The Board may issue special permits, to be known as courtesy cards, permitting nonresident funeral directors, embalmers and funeral service licensees to remove bodies from and to arrange and direct funerals and embalm bodies in this State, but these privileges shall not include the right to establish a place of business in or engage generally in the business of funeral directing and embalming in this State. Except for special permits issued by the Board for teaching continuing education programs and for work in connection with disasters, no special permits may be issued to nonresident funeral directors, embalmers, and funeral service licensees from states that do not issue similar courtesy cards to persons licensed in North Carolina pursuant to this Article.

(c) Registration, Filing and Transportation. –

(1) The holder of any license granted by this State for those within the funeral service profession or renewal thereof provided for in this Article shall cause registration to be filed in the office of the board of health of the county or city in which he practices his profession, or if there be no board of health in such county or city, at the office of the clerk of the superior court of such county. All such licenses, certificates, duplicates and renewals thereof shall be displayed in a conspicuous place in the funeral establishment where the holder renders service.

(2) It shall be unlawful for any railway agent, express agency, baggage master, conductor or other person acting as such, to receive the dead body of any person for shipment or transportation by railway or other public conveyance, to a point outside of this State, unless the body is accompanied by a burial-transit permit.

(3) The "transportation or removal of a dead human body" shall mean the removal of a dead human body for a fee from the location of the place of death or discovery of death or the transportation of the body to or from a medical facility, funeral establishment or facility, crematory or related holding facility, place of final disposition, or place designated by the Medical Examiner for examination or autopsy of the dead human body.

(4) Any individual, not otherwise exempt from this subsection, shall apply for and receive a permit from the Board before engaging in the transportation or removal of a dead human body in this State. Unless otherwise exempt from this subsection, no corporation or other business entity shall engage in the transportation or removal of a dead human body unless it has in its employ at least one individual who holds a permit issued under this section. No individual permit holder shall engage in the transportation or removal of a dead human body for more than one person, firm, or corporation without first providing the

Board with written notification of the name and physical address of each such employer.

(5) The following persons shall be exempt from the permit requirements of this section but shall otherwise be subject to subdivision (9) of this subsection and any rules relating to the proper handling, care, removal, or transportation of a dead human body:
  a. Licensees under this Article and their employees.
  b. Employees of common carriers.
  c. Except as provided in sub-subdivision (6)c. of this section, employees of the State and its agencies and employees of local governments and their agencies.
  d. Funeral directors licensed in another state and their employees.

(6) The following persons shall be exempt from this section:
  a. Emergency medical technicians, rescue squad workers, volunteer and paid firemen, and law enforcement officers.
  b. Employees of public or private hospitals, nursing homes, or long-term care facilities, while handling a dead human body within such facility or while acting within the scope of their employment.
  c. State and county medical examiners and their investigators.
  d. Any individual transporting cremated remains.
  e. Any individual transporting or removing a dead human body of their immediate family or next of kin.
  f. Any individual who has exhibited special care and concern for the decedent.

(7) Individuals eligible to receive a permit under this section for the transportation or removal of a dead human body for a fee, shall:
  a. Be at least 18 years of age.
  b. Possess and maintain a valid drivers license issued by this State and provide proof of all liability insurance required for the registration of any vehicle in which the person intends to engage in the business of the removal or transportation of a dead human body.
  c. Affirmatively state under oath that the person has read and understands the statutes and rules relating to the removal and transportation of dead human bodies and any guidelines as may be adopted by the Board.
  d. Provide three written character references on a form prescribed by the Board, one of which must be from a licensed funeral director.
  e. Be of good moral character.

(8) The permit issued under this section shall expire on December 31 of each year. The application fee for the individual permit shall not exceed one hundred twenty-five dollars ($125.00). A fee, not to exceed

one hundred dollars ($100.00), in addition to the renewal fee not to exceed seventy-five dollars ($75.00), shall be charged for any application for renewal received by the Board after February 1 of each year.

(9) No person shall transport a dead human body in the open cargo area or passenger area of a vehicle or in any vehicle in which the body may be viewed by the public. Any person removing or transporting a dead human body shall either cover the body, place it upon a stretcher designed for the purpose of transporting humans or dead human bodies in a vehicle, and secure such stretcher in the vehicle used for transportation, or shall enclose the body in a casket or container designed for common carrier transportation, and secure the casket or container in the vehicle used for transportation. No person shall fail to treat a dead human body with respect at all times. ~~use profanity, indecent, or obscene language in the presence of a dead human body.~~ No person shall take a photograph or video recording of a dead human body without the consent of a member of the deceased's immediate family or next of ~~kin.~~kin or other authorizing agent.

(10) The Board may adopt rules under this section including permit application procedures and the proper procedures for the removal, handling, and transportation of dead human bodies. The Board shall consult with the Office of the Chief Medical Examiner before initiating rule making under this section and before adopting any rules pursuant to this section. Nothing in this section prohibits the Office of the Chief Medical Examiner from adopting policies and procedures regarding the removal, transportation, or handling of a dead human body under the jurisdiction of that office that are more stringent than the laws in this section or any rules adopted under this section. Any violation of this section or rules adopted under this section may be punished by the Board by a suspension or revocation of the permit to transport or remove dead human bodies or by a term of probation. The Board may, in lieu of any disciplinary measure, accept a penalty not to exceed five thousand dollars ($5,000) per violation.

(11) Each applicant for a permit shall provide the Board with the applicant's home address, name and address of any corporation or business entity employing such individual for the removal or transportation of dead human bodies, and the make, year, model, and license plate number of any vehicle in which a dead human body is transported. A permittee shall provide written notification to the Board of any change in the information required to be provided to the Board by this section or by the application for a permit within 30 days after such change takes place.

(12) If any person shall engage in or hold himself out as engaging in the business of transportation or removal of a dead human body without

first having received a permit under this section, the person shall be guilty of a Class 2 misdemeanor.

(13) The Board shall have the authority to inspect any place or premises that the business of removing or transporting a dead human body is carried out and shall also have the right of inspection of any vehicle and equipment used by a permittee for the removal or transportation of a dead human body.

(d) Establishment Permit. –

(1) No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for that establishment has been issued by the Board and is conspicuously displayed in the establishment. Each funeral establishment at a specific location shall be deemed to be a separate entity and shall require a separate permit and compliance with the requirements of this Article.

(2) A permit shall be issued when:

a. It is shown that the funeral establishment has in charge a person, known as a manager, licensed for the practice of funeral directing or funeral service, who shall not be permitted to manage more than one funeral establishment.

b. The Board receives a list of the names of all part-time and full-time licensees employed by the establishment.

c. It is shown that the funeral establishment satisfies the requirements of G.S. 90-210.27A.

d. The Board receives payment of the permit fee.

(3) Applications for funeral establishment permits shall be made on forms provided by the Board and filed with the Board by the owner, a partner, a member of the limited liability company, or an officer of the corporation by January 1 of each year, and shall be accompanied by the application fee or renewal fee, as the case may be. All permits shall expire on December 31 of each year. If the renewal application and renewal fee are not received in the Board's office on or before February 1, a late renewal fee, ~~A penalty for late renewal,~~ in addition to the regular renewal fee, shall be ~~charged for renewal of registration received after the first day of February.~~charged.

(4) The Board may suspend or revoke a permit when an owner, partner, manager, member, operator, or officer of the funeral establishment violates any provision of this Article or any regulations of the Board, or when any agent or employee of the funeral establishment, with the consent of any person, firm or corporation operating the funeral establishment, violates any of those provisions, rules or regulations.

(5) Funeral establishment permits are not transferable. A new application for a permit shall be made to the Board within 30 days of a change of ownership of a funeral establishment.

(d1) Embalming Outside Establishment. – An embalmer who engages in embalming in a facility other than a funeral establishment or in the residence of the deceased person shall, no later than January 1 of each year, register the facility with the Board on forms provided by the Board.

(e) Revocation; Suspension; Compromise; Disclosure. –

(1) Whenever the Board finds that an applicant for a license or a person to whom a license has been issued by the Board is guilty of any of the following acts or omissions and the Board also finds that the person has thereby become unfit to practice, the Board may suspend or revoke the license or refuse to issue or renew the license, in accordance with the procedures set out in Chapter ~~150B:~~150B of the General Statutes:

a. Conviction of a felony or a crime involving fraud or moral turpitude.

b. Fraud or misrepresentation in obtaining or renewing a license or in the practice of funeral service.

c. False or misleading advertising as the holder of a license.

d. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this paragraph shall not be construed to prohibit general advertising by the licensee.

e. Employment directly or indirectly of any resident trainee agent, assistant or other person, on a part-time or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee.

f. The ~~direct or indirect giving of certificates of credit or the~~ payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing ~~business.~~business except as authorized by Article 13D of this Chapter.

g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral service.

h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material published or caused to be published by the licensee.

i. Failing to treat a dead human body with respect at all times. ~~Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of.~~

j. Violating or cooperating with others to violate any of the provisions of this Article, the rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies.

l. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to the custody thereof.

m. Knowingly making any false statement on a certificate of death.

n. Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is entitled to suspend, revoke or refuse to renew a license, the Board may accept from the licensee an offer to pay a penalty of not more than five thousand dollars ($5,000). The Board may either accept a penalty or revoke or refuse to renew a license, but not both.

(2) Where the Board finds that a licensee is guilty of one or more of the acts or omissions listed in subdivision (e)(1) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter ~~150B.~~150B of the General Statutes. In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars ($5,000) in conjunction with the probation.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he or she has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral service establishment shall accept a dead human body from any public officer (excluding the State or county medical examiner or his agent), or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the persons who have the legal authority to direct the disposition of the decedent's body. If any persons are found, their authority and directions shall govern the disposal of the remains of the decedent. Any funeral service establishment receiving the remains in violation of this subsection shall make no charge for any service in connection with the remains prior to delivery of the remains as stipulated by the persons having legal authority to direct the disposition of the body. This section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the persons having legal authority to direct the disposition of the body have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting forth the price of the service using said merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time. The statement shall have printed, typed or stamped on the face thereof: "This statement of disclosure is provided under the requirements of North Carolina G.S. 90-210.25(e)."

(f) Unlawful Practices. – If any person shall practice or hold himself out as practicing the profession or art of embalming, funeral directing or practice of funeral service without having complied with the licensing provisions of this Article, he shall be guilty of a Class 2 misdemeanor.

(g) Whenever it shall appear to the Board that any person, firm or corporation has violated, threatens to violate or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue an order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides."

SECTION 8.(a) Chapter 65 of the General Statutes is amended by adding the following new Article to read:

"Article 11.

"Minimum Burial Depth."

SECTION 8.(b) G.S. 90-210.25A is recodified as G.S. 65-77 in Article 11 of Chapter 65 of the General Statutes, as enacted by section 8.(a) of this act.

SECTION 9.(a) G.S. 90-210.27A(g) reads as rewritten:

"(g) No funeral establishment or other licensee under this Article shall own, operate, or maintain a funeral chapel without first having registered the name, location, and ownership thereof with the ~~Board.~~Board; own or maintain more than two funeral chapels, or own or maintain a funeral chapel outside of a radius of 50 miles from the funeral establishment. A duly licensed person may use a funeral chapel for making

arrangements for funeral service, selling funeral supplies to the public, or making financial arrangements for the rendering of such service or sale of supplies, provided that such uses are secondary and incidental to and do not interfere with the reposing of dead human bodies, visitation, or funeral ceremony."

SECTION 9.(b) G.S. 90-210.27A is amended by adding the following new subsections to read:

"(i) No funeral establishment shall use an unregistered or misleading name. Misleading names include, but are not limited to, names in the plural form when there is only one funeral establishment and the use of the word "crematory" or "crematorium" in the name of a funeral establishment that does not own a crematory. If an owner of a funeral establishment owns more than one funeral establishment, the owner may not use the word "crematory" or "crematorium" in the name of more than one of its funeral establishments; except that each funeral home having a crematory on the premises may contain the term "crematory" or "crematorium" in its name.

(j) A funeral establishment will not use any name other than the name by which it is properly registered with the Board."

SECTION 10. G.S. 90-210.29A reads as rewritten:

"**§ 90-210.29A. Identification of bodies before burial or cremation.**

The funeral director or person otherwise responsible for the final disposition of a dead body shall, prior to the interment or entombment of the dead body, affix on the ankle or wrist of the dead body, or, if cremated, on the inside of the ~~vessel~~ temporary container or urn containing the remains of the dead body, a tag of durable, noncorroding material permanently marked with the name of the deceased, the date of death, the social security number of the deceased, the county and state of death, and the site of interment or entombment."

SECTION 11. G.S. 90-210.63(a)(2) reads as rewritten:

"**§ 90-210.63. Substitution of licensee.**

(a) If the preneed funeral contract is irrevocable, the preneed funeral contract purchaser, or after his death the preneed funeral contract beneficiary or his legal representative, upon written notice to the financial institution or insurance company and the preneed licensee who is a party to the preneed funeral contract, may direct the substitution of a different funeral establishment to furnish funeral services and merchandise.

...

(2) The original contracting preneed licensee shall immediately pay all funds received to the successor funeral establishment designated. Regardless of whether the substitution is made before or after the death of the preneed funeral contract beneficiary, the original contracting preneed licensee shall not be required to give credit for the amount retained pursuant to G.S. 90-210.61(a)(2), except when there was a substitution under G.S. 90-210.68(d1) and (e). ~~Except when there was a substitution under G.S. 90-210.68(d1) and (e), if the original contracting preneed licensee did not retain any portion of payments made as is permitted by G.S. 90-210.61(a)(2) then the preneed licensee~~

~~may retain up to ten percent (10%) of the funds received from the financial institution.~~ Upon making payments pursuant to this subsection, the financial institution and the original contracting preneed licensee shall be relieved from all further contractual liability thereon.

...."

SECTION 12. G.S. 90-210.64(a) reads as rewritten:

"**§ 90-210.64. Death of preneed funeral contract beneficiary; disposition of funds.**

(a) After the death of a preneed funeral contract beneficiary and full performance of the preneed funeral contract by the preneed licensee, the preneed licensee shall promptly complete a certificate of performance ~~or similar claim form~~ and present it to the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the certificate of performance or similar claim form, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. Within 10 days after receiving payment, the preneed licensee shall mail a copy of the certificate of performance or other claim form to the Board."

SECTION 13. G.S. 90-210.65(e) reads as rewritten:

"**§ 90-210.65. Refund of preneed funeral funds.**

(e) This section shall not apply to irrevocable preneed funeral contracts. Irrevocable preneed funeral contracts may not be revoked nor any proceeds refunded except by order of a court of competent jurisdiction. Notwithstanding the previous sentence, irrevocable preneed funeral contracts purchased pursuant to G.S. 90-210.61(a)(3) shall also be revocable when the underlying insurance policy lapses or is otherwise cancelled and the lapsed or cancelled policy no longer provides any funding for the preneed funeral contract."

SECTION 14. G.S. 90-210.67(e) and (f) are repealed.

SECTION 15. G.S. 90-210.70 is amended by adding the following new subsection to read:

"(e) Whenever it shall appear to the Board that any person, firm, or corporation has violated, threatens to violate, or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue an order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides."

SECTION 16. G.S. 143B-472.5, as recodified by Section 17 of this act, reads as rewritten:

"**§ 90-210.83. Assessments against ~~association for expenses of Board of Mortuary Science.~~associations.**

~~In order to meet the expenses of the supervision of the burial associations, the Board of Mortuary Science shall prepare an annual budget for the office of the Board of Mortuary Science. Thereafter, the Board of Mortuary Science shall~~ The North Carolina Board of Funeral Service shall annually assess each burial association one hundred dollars ($100.00) plus an amount not to exceed fifty cents (50¢) per member. ~~and shall prorate the remaining amount of this budget, over and above any other funds made available to it for this purpose, and assess each association on a pro rata basis in accordance with the number of members of each association.~~ Each burial association shall remit to the Board of ~~Mortuary Science~~ Funeral Service its ~~pro rata part of the total~~ assessment, which expense shall be included in the thirty per centum (30%) expense allowance as provided in G.S. ~~143B-472.3.~~ 90-210.81. This assessment shall be made on the first day of July of each and every year and said assessment shall be paid within 30 days thereafter. If any association shall fail or refuse to pay such assessment within 30 days, the Board of ~~Mortuary Science~~ Funeral Service is authorized to transfer all memberships and assets of every kind and description to the nearest association that is found by the Board of ~~Mortuary Science~~ Funeral Service to be in good sound financial condition."

SECTION 17.(a) Chapter 90 of the General Statutes is amended by adding the following new Article to read:

"Article 13E.

"Mutual Burial Associations."

SECTION 17.(b) G.S. 143B-472.2 through G.S. 143B-472.29 are recodified as G.S. 90-210.80 through G.S. 90-210.107 in Article 13E of Chapter 90 of the General Statutes, as enacted by section 17.(a) of this act. The Revisor of Statutes is authorized to make changes to statutory cross-references that will reflect the results of the recodification.

SECTION 18. This act becomes effective October 1, 2003.

SENATE BILL 550:
Crematory Act Changes

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator Hagan
Date:	June 5, 2003	**Summary by:**	Wendy Graf Ray
Version:	Proposed Committee Substitute S550-CSSU-28[v.7]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 550 would revise and reorganize the North Carolina Crematory Act, and would update and make technical changes to the law on funeral service.***

BILL ANALYSIS: Article 13C of Chapter 90 of the General Statutes sets out regulations pertaining to crematories and crematory operators doing business in North Carolina. The Proposed Committee Substitute would amend Article 13C and related statutes in the following ways:

Section 1 would change the name of the Board of Mortuary Science to the Board of Funeral Service throughout the General Statutes.

Section 2 would reorganize and amend Article 13C, which is the North Carolina Crematory Act.

Definitions. Definitions for the following terms would be added to G.S. 90-210.41: "body parts"; "casket"; "certificate of cremation"; "cremation interment container"; "crematory licensee" (called "crematory operator" under current law); "crematory manager" (must be licensed to practice funeral directing or funeral service and qualify as a "crematory technician"; for crematories licensed after January 1, 2004, crematory manager must have permit issued by the Board); "crematory technician" (employee of a crematory licensee who has attended a training course approved by the Board); "final disposition"; "holding and processing facility"; "processing"; "pulverization"; "scattering area"; and "temporary container" and "urn" (replace current definition of "closed container").

Crematory Authority. G.S. 90-210.42 establishes the North Carolina Crematory Authority as a committee within the Board of Mortuary Science. The Authority consists of seven members, and five members constitute a quorum. This section would amend G.S. 90-210.42 so that three members would constitute a quorum.

Licensing and Inspection. This section would make clarifying and conforming changes to existing provisions of G.S. 90-210.43. The following grounds would be added for suspending, revoking, or refusing to issue a license: solicitation of bodies; employing persons for the purpose of influencing others to turn bodies over to the licensee; paying a commission to secure business; aiding or abetting an unlicensed person to perform cremation services; and practicing funeral directing, embalming, or funeral service without a license. The Board would also be authorized to put a licensee on probation.

Authorizing agent. New G.S. 90-210.44 would specify who would be legally entitled to authorize the cremation of human remains. The authorizing agent would be the following persons (listed in order of priority): the individual being cremated through an acceptable written instrument; surviving spouse; surviving children; surviving parents; surviving siblings; other relatives; person who has exhibited special care for the decedent; public official charged with arranging for final disposition of the decedent; representative of an institution to which the body has been donated, or in which the death occurred if the

institution is charged with making arrangements for final disposition; any person willing to assume responsibility in the absence of another authorizing agent.

Authorization to cremate. New G.S. 90-210.45 would prohibit a crematory licensee from cremating human remains until the licensee has received an authorization form, that includes all information specified in the statute, signed by the authorizing agent. The authorizing agent would be deemed to warrant the truthfulness of the facts set forth on the authorization form, and crematory licensees and funeral establishments would not be subject to liability for cremating human remains pursuant to an authorization, in absence of gross negligence, as long as the licensee complies with the appropriate requirements.

Preneed cremation arrangements. New G.S. 90-210.46 would allow individuals to execute a form authorizing the cremation and disposition of their own remains upon their death. Copies of the form, once executed, would be sent to the funeral establishment and/or crematory licensee, but the authorization could be transferred or cancelled at any time prior to the individual's death.

Record keeping. G.S. 90-210.47 (currently G.S. 90-210.44) would significantly expand statutory record keeping requirements. Current law simply authorizes the Board to establish requirements for record keeping, authorizations, and reports. New G.S. 90-210.47 would require crematory licensees to keep detailed records whenever human remains are delivered to the crematory licensee and whenever cremated remains are released, and those records would have to be retained for at least three years. A licensee would have to maintain for three years a record of all forms required by the Board for each cremation that takes place at its facility, and a record of all cremated remains that were disposed of by the licensee. The licensee would also have to issue a certificate of cremation upon the completion of each cremation, and all records maintained by the licensee would be subject to inspection by the Board.

Cremation containers. New G.S. 90-210.48 would prohibit crematory licensees from requiring that human remains be placed in a casket, or that they be placed in an urn after cremation.

Cremation procedures. G.S. 90-210.49 (currently G.S. 90-210.45) would make clarifying and conforming changes to existing provisions. The cremation of bodies with pacemakers, defibrillators, or other potentially hazardous implants or conditions would be prohibited. The authorizing agent would be responsible for taking necessary steps to ensure that these conditions are removed or corrected prior to cremation. New G.S. 90-210.49 would also set out specific procedures for handling cremated remains after the cremation process is completed.

Disposition of cremated remains. G.S. 90-210.50 (currently G.S. 90-210.46) would make clarifying and conforming changes to existing provisions.

Liability. G.S. 90-210.51 (currently G.S. 90-210.47) would make clarifying and conforming changes to existing provisions. It would also authorize a crematory licensee to charge a reasonable storage fee if a dispute concerning the release or disposition of cremated remains is not resolved within 30 days.

Fees. G.S. 90-210.52 (currently G.S. 90-210.48) would authorize the Board to collect a fee of $150 for a crematory manager permit application, and a fee of $40 for an annual crematory manager permit renewal.

Crematory licensee rights. G.S. 90-210.53 (currently G.S. 90-210.49) would make conforming changes to existing provisions.

Rulemaking, applicability, violations, and prohibitions. G.S. 90-210.54 (currently G.S. 90-210.50) would make conforming changes to existing provisions. It would also authorize the Board to develop a

Standard Cremation Authorization Form that would have to be used by crematory licensees unless a licensee has its own form approved by the Board.

Sections 3 through 10 would make technical, clarifying, conforming, and organizational changes to Article 13A of Chapter 90, which sets out regulations pertaining to the practice of funeral service.

Required meetings of the Board. Section 4 would require the Board to hold at least four meetings a year, rather than two.

Powers of the Board. Section 5.(b) would authorize the Board to acquire and deal with property in the same manner as a private person or corporation, subject to the approval of the Governor and Council of State. The Board would also be authorized to employ legal counsel and clerical and technical assistance.

Inspector. G.S. 90-210.24 authorizes the Board to appoint inspectors who have the authority to enter and inspect funeral service establishments, places of business of licensees under the Article, and institutions from which dead bodies have been removed. Section 6.(b) would grant all the powers of an inspector to the Board's Executive Director.

Licensing. Section 7 would make the following changes to G.S. 90-210.25, which sets out licensing requirements for funeral directing, embalming, and funeral service:

- To be licensed for the practice of funeral directing, would add requirement that applicant must be a graduate of a Funeral Directing Program at an approved school of mortuary science.
- To be licensed for the practice of funeral service, would add requirement that applicant must receive an associate degree from an approved school of mortuary science, in addition to being a graduate. Applicant would also have to complete a minimum of 60 semester hours (currently 32 hours) or 90 quarter hours (currently 48 hours) of instruction.
- Would require licensees to complete 10 hours of continuing education during the year prior to renewal of the license (currently 5 hours). Would waive continuing education requirements for licensees who have been licensed for 25 years or more if they were licensed on or before December 31, 2003, but for licensees licensed on or after January 1, 2004, the licensee would have to have been licensed for 25 years or more and be at least 60 years old to have the continuing education requirements waived.
- Would require a funeral directing or funeral service licensee to own or be employed by a licensed funeral establishment in order to practice, except under specified circumstances.

Funeral chapels. A funeral chapel is defined as a facility separate from the funeral establishment premises for the reposing of dead human bodies. Section 9.(a) would amend G.S. 90-210.27A(g) to prohibit a funeral establishment from owning or maintaining more than two chapels or owning or maintaining a chapel outside of a radius of 50 miles from the establishment.

Funeral establishment names. Section 9.(b) would prohibit a funeral establishment from using an unregistered or misleading name, or any name other than the name by which it is properly registered with the Board.

Sections 11 through 15 would amend provisions of Article 13D of Chapter 90, which sets out regulations pertaining to the sale of preneed funeral contracts.

Sections 16 and 17 would recodify the statutes pertaining to mutual burial associations as new Article 13E in Chapter 90, and would amend G.S. 90-210.83 (currently G.S. 143B-472.5) to require the Board to annually assess each burial association an additional fifty cents per member.

EFFECTIVE DATE: The bill would become effective October 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 550*
PROPOSED COMMITTEE SUBSTITUTE S550-PCS85252-SU-28

Short Title: Crematory Act Changes. (Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO IMPROVE AND STRENGTHEN CREMATION LAW IN NORTH CAROLINA AND TO IMPROVE AND MAKE TECHNICAL CORRECTIONS TO THE FUNERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. The name of the North Carolina Board of Mortuary Science is changed to the North Carolina Board of Funeral Service. The Revisor of Statutes is authorized to substitute the term "Board of Funeral Service" for the term "Board of Mortuary Science" wherever that term appears in the General Statutes.

SECTION 2. Article 13C of Chapter 90 of the General Statutes reads as rewritten:

"Article 13C.

"Cremations.

"**§ 90-210.40. Short title.**

This Article shall be known and may be cited as the North Carolina Crematory Act.

"**§ 90-210.41. Definitions.**

As used in this Article, unless the context requires otherwise:

~~(1) "Authorizing agent" means a person legally entitled to order, or carry out the legal order for, the cremation of human remains. In the case of indigents or any other individuals whose final disposition is the responsibility of the State, a public official charged with arranging the final disposition of the deceased, if legally authorized, may serve as the authorizing agent. In the case of individuals whose death occurred in a nursing home or other private institution, and in which the institution is charged with making arrangements for the final disposition of the deceased, a representative of the institution, if legally authorized, may serve as the authorizing agent.~~

~~(2) "Board" means the North Carolina State Board of Mortuary Science.~~

~~(3) Repealed by Session Laws 1997-399, s. 16.~~

~~(4) "Closed container" means any container in which cremated remains can be placed and closed in a manner so as to prevent leakage or spillage of cremated remains or the entrance of foreign material.~~

~~(5) "Cremated remains" means all human remains recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions.~~

~~(6) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments.~~

~~(7) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers covered by this Article shall be used exclusively for the cremation of human remains.~~

~~(8) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet all of the standards established by the rules adopted by the Board.~~

~~(9) "Crematory" means the building or portion of a building that houses the cremation chamber and that may house the holding facility, business office or other part of the crematory business. A crematory must comply with any applicable public health laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board.~~

~~(10) "Crematory authority" means the North Carolina Crematory Authority.~~

~~(11) "Crematory operator" means the legal entity which is licensed by the Board to operate a crematory and perform cremations.~~

~~(12) Repealed by Session Laws 1997-399, s. 16.~~

~~(13) "Human remains" means the body of a deceased person, including a human fetus, regardless of the length of gestation, or part of a body that has been removed from a living or deceased person.~~

~~(14) "Niche" means a compartment or cubicle for the memorialization or permanent placement of an urn containing cremated remains.~~

(1) 'Authorizing agent' means a person legally entitled to authorize the cremation of human remains in accordance with G.S. 90-210.44.

(2) 'Board' means the North Carolina Board of Funeral Service.

(3) 'Body parts' means limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or human bodies or any portion thereof that have been donated to science for medical purposes.

(4) 'Casket' means a rigid container that is designed for the encasement of human remains and that is usually constructed of wood, metal, or other material and ornamented and lined with fabric, and which may or may not be combustible.

(5) 'Certificate of cremation' means a certificate provided by the crematory manager who performed the cremation containing, at a minimum, the following information:
  a. Name of decedent;
  b. Date of cremation;
  c. Name and address of crematory; and
  d. Signature of crematory manager or person acting as crematory manager.

(6) 'Cremated remains' means all human remains recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions.

(7) 'Cremation' means the technical process, using intense heat and flame, that reduces human remains to bone fragments. Cremation includes the processing and may include the pulverization of the bone fragments.

(8) 'Cremation chamber' means the enclosed space within which the cremation process takes place. Cremation chambers covered by this Article shall be used exclusively for the cremation of human remains.

(9) 'Cremation container' means the container in which the human remains are transported to the crematory or placed therein upon arrival for storage and placement in a cremation chamber for cremation. A cremation container shall comply with all of the following standards:
  a. Be composed of readily combustible materials suitable for cremation;
  b. Be able to be closed in order to provide a complete covering for the human remains;
  c. Be resistant to leakage or spillage;
  d. Be rigid enough for handling with ease;
  e. Be able to provide protection for the health, safety, and personal integrity of crematory personnel; and
  f. Be easily identifiable. The covering of the cremation container shall contain the following information:
    1. The name of the decedent;
    2. The date of death;
    3. The sex of the decedent; and
    4. The age at death of the decedent.

(10) 'Cremation interment container' means a rigid outer container composed of concrete, steel, fiberglass, or some similar material in which an urn is placed prior to being interred in the ground and which is designed to withstand prolonged exposure to the elements and to support the earth above the urn.

(11) 'Crematory' or 'crematorium' means the building or buildings or portion of a building on a single site that houses the cremation equipment, the holding and processing facilities, the business office, and other parts of the crematory business. A crematory must comply

with all applicable public health and environmental laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board.

(12) 'Crematory licensee' means the individual or legal entity that is licensed by the Board to operate a crematory and perform cremations.

(13) 'Crematory manager' means the person who is responsible for the management and operation of the crematory. A crematory manager must be licensed to practice funeral directing or funeral service and must also be qualified as a crematory technician, or for crematories licensed after January 1, 2004, must obtain a crematory manager permit issued by the Board. In order to receive a crematory manager permit, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Have completed with a grade of "C" or higher a course in pathology at a mortuary science college approved by the Board or accredited by the American Board of Funeral Service Education.

d. Be qualified as a crematory technician.

e. Have passed an oral or written examination administered by the Board on the following subjects: pathology, universal precautions, and the laws and rules of the Board of Funeral Service and other agencies dealing with the cremation of dead human bodies and the disposition of cremated remains.

Notwithstanding any other provision of law, a crematory that is licensed by the Board prior to January 1, 2004, and as of that date is not managed by a crematory manager who is licensed to practice funeral directing or funeral service, or who has a crematory manager permit, may continue to be managed by a crematory manager who is not licensed to practice funeral directing or funeral service or who does not have a crematory manager permit so long as there is no sale, transfer, devise, bequest, gift, or any other disposal of a controlling interest in the crematory and the crematory does not arrange cremations directly with the public.

(14) 'Crematory technician' means any employee of a crematory licensee who has a certificate confirming that the crematory technician has attended a training course approved by the Board.

(15) 'Final disposition' means the cremation and the ultimate interment, entombment, inurnment, or scattering of the cremated remains or the return of the cremated remains by the crematory licensee to the authorizing agent or such agent's designee as provided in this Article. Upon the written direction of the authorizing agent, cremated remains may take various forms.

(16) 'Holding and processing facility' means an area or areas that are designated for the retention of human remains prior to, and the retention and processing of cremated remains after, cremation; that comply with all applicable public health and environmental laws; preserve the health and safety of the crematory technician and other personnel of the crematory; and that are secure from access by anyone other than authorized persons. A holding facility and processing facility must be located in a crematory.

(17) 'Human remains' means the body of a deceased person, including a separate human fetus, regardless of the length of gestation, or body parts.

(18) 'Niche' means a compartment or cubicle for the memorialization or final disposition of an urn or container containing cremated remains.

(19) 'Processing' means the removal of bone fragments from the cremation chamber for the reduction in size, labeling and packaging, and placing in an urn or temporary container.

(20) 'Pulverization' means the reduction of identifiable or unidentifiable bone fragments after the completion of the cremation to granulated particles by mechanical means.

(21) 'Scattering area' means an area permitted by North Carolina law including, but not limited to, an area designated by a cemetery and located on dedicated cemetery property where cremated remains that have been removed from their container can be mixed with or placed on top of the soil or ground cover.

(22) 'Temporary container' means a receptacle for cremated remains, usually composed of cardboard, plastic, or similar material which can be closed in a manner so as to prevent the leakage or spillage of the cremated remains or the entrance of foreign material and which is a single container of sufficient size to hold the cremated remains until an urn is acquired or the cremated remains are scattered.

(23) 'Urn' means a receptacle designed to permanently encase the cremated remains.

"§ 90-210.42. Crematory Authority established.

(a) The North Carolina Crematory Authority is established as a Committee within the Board. The Crematory Authority shall suggest rules to the Board for the carrying out and enforcement of the provisions of this Article.

(b) The Crematory Authority shall initially consist of five members appointed by the Governor and two members of the Board appointed by the Board. The Governor may consider a list of recommendations from the Cremation Association of North Carolina.

(c) The initial terms of the members of the Crematory Authority shall be staggered by the appointing authorities so that the terms of three members (two of which shall be appointees of the Governor) expire December 31, 1991, the terms of two members (both of which shall be appointees of the Governor) expire

December 31, 1992, and the terms of the remaining two members (one of which shall be an appointee of the Governor) expire December 31, 1993.

As the terms of the members appointed by the Governor expire, their successors shall be elected from among a list of nominees in an election conducted by the Board in which all licensed crematory operators are eligible to vote. The Board may conduct the election for members of the Crematory Authority simultaneously with the election for members of the Board or at any other time. The Board shall prescribe the procedures and establish the time and date for nominations and elections to the Crematory Authority. A nominee who receives a majority of the votes cast shall be declared elected. The Board shall appoint the successors to the two positions for which it makes initial appointments pursuant to this section.

The terms of the elected members of the Crematory Authority shall be three years. The terms of the members appointed by the Board, including the members initially appointed pursuant to this subsection, shall be coterminous with their terms on the Board. Any vacancy occurring in an elective seat shall be filled for the unexpired term by majority vote of the remaining members of the Crematory Authority. Any vacancy occurring in a seat appointed by the Governor shall be filled by the Governor. Any vacancy occurring in a seat appointed by the Board shall be filled by the Board.

(d) The members of the Crematory Authority shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 93B-5 for all time actually spent upon the business of the Crematory Authority. All expenses, salaries and per diem provided for in this Article shall be paid from funds received ~~under the provisions of this Article and Article 13A~~ and shall in no manner be an expense to the State.

(e) The Crematory Authority shall select from its members a chairman, a vice chairman and a secretary who shall serve for one year or until their successors are elected and qualified. No two offices may be held by the same person. The Crematory Authority, with the concurrence of the Board, shall have the authority to engage adequate staff as deemed necessary to perform its duties.

(f) The Crematory Authority shall hold at least one meeting in each year. In addition, the Crematory Authority may meet as often as the proper and efficient discharge of its duties shall require. ~~Five~~ Three members shall constitute a quorum.

"§ 90-210.43. Licensing and inspection.

~~(a) Any person doing business in this State, or any cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity may erect, maintain and conduct a crematory in this State and may provide the necessary appliances and facilities for the cremation of human remains, provided that such person has secured a license as a crematory operator in accordance with the provisions of this Article.~~

~~(b) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment that is zoned commercial or industrial, or at any other location consistent with local zoning regulations.~~

~~(c) Application for a license as a crematory operator shall be made on forms furnished and prescribed by the Board. The Board shall examine the premises and~~

~~structure to be used as a crematory and shall issue a renewable license to the crematory operator if the applicant meets all the requirements and standards of the Board and the requirements of this Article.~~

~~(d) Every application for licensure shall identify the individual who is responsible for overseeing the management and operation of the crematory. The crematory operator shall keep the Board informed at all times of the name and address of the manager.~~

~~(d1) All licenses shall expire on the last day of December of each year. A license may be renewed without paying a late fee on or before the first day of February immediately following expiration. After that date, a license may be renewed by paying a late fee as provided in G.S. 90-210.48 in addition to the annual renewal fee. Licenses that remain expired six months or more require a new application for renewal. Licenses are not transferable. A new application for a license shall be made to the Board within 30 days following a change of ownership of more than fifty percent (50%) of the business.~~

~~(e) No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and under the limitations provided in this Article, or unless otherwise permitted by statute.~~

~~(f) Whenever the Board finds that an owner, partner, manager, member, or officer of a crematory operator or an applicant to become a crematory operator, or that any agent or employee of a crematory operator or an applicant to become a crematory operator, with the direct or implied permission of such owner, partner, manager, member, or officer, has violated any provision of this Article, or is guilty of any of the following acts, and when the Board also finds that the crematory operator or applicant has thereby become unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license, in accordance with the procedures of Chapter 150B:~~

- ~~(1) Conviction of a felony or a crime involving fraud or moral turpitude.~~
- ~~(2) Fraud or misrepresentation in obtaining or renewing a license or in the practice of cremation.~~
- ~~(3) False or misleading advertising.~~
- ~~(4) Gross immorality, including being under the influence of alcohol or drugs while performing cremation services.~~
- ~~(5) Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been cremated or otherwise disposed of.~~
- ~~(6) Violating or cooperating with others to violate any of the provisions of this Article or of the rules of the Board.~~
- ~~(7) Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies.~~
- ~~(8) Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully~~

~~entitled to the custody thereof, except as provided in G.S. 90-210.47(e).~~

~~(9) Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.~~

~~In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000).~~

~~(g) The Board and Crematory Authority may hold hearings in accordance with the provisions of this Article and Chapter 150B. Any such hearing shall be conducted jointly by the Board and the Crematory Authority. The Board and the Crematory Authority shall jointly constitute an "agency" under Article 3A of Chapter 150B of the General Statutes with respect to proceedings initiated pursuant to this Article. The Board is empowered to regulate and inspect crematories and crematory operators and to enforce as provided by law the provisions of this Article and the rules adopted hereunder. Any crematory that, upon inspection, is found not to meet any of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain whether the deficiency or other violation has been corrected.~~

~~In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation or proceeding conducted by it or conducted jointly with the Crematory Authority. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the President of the Board for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor.~~

(a) Any person doing business in this State, or any cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization, or any other entity may erect, maintain, and operate a crematory in this State and may provide the necessary employees, facilities, structure, and equipment for the cremation of human remains, provided that the person or entity has secured a license as a crematory licensee in accordance with this Article.

(b) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment that is zoned commercial or industrial, or at any other location consistent with local zoning and environmental regulations.

(c) Application for a license as a crematory licensee shall be made on forms furnished and prescribed by the Board. The Board shall inspect the premises, facilities, structure, and equipment to be used as a crematory, confirm that the crematory manager's and crematory technician's educational certificate is valid, and issue a renewable license to the crematory licensee if the applicant meets all the requirements and standards of the Board and the requirements of this Article.

(d) Every application for licensure shall identify the crematory manager and all crematory technicians employed by the crematory licensee providing that nothing in this Article shall prohibit the designation and identification by the crematory licensee of one individual to serve as a crematory manager and crematory technician. Each crematory licensed in North Carolina shall employ on a full-time basis at least one crematory technician. Every application for licensure and renewal thereof shall include all crematory technicians' educational certificates. The crematory licensee shall keep the Board informed at all times of the names and addresses of the crematory manager and all crematory technicians. In the event a licensee is in the process of replacing its only crematory technician at the time of license renewal, the licensee may continue to operate the crematory for a reasonable time period not to exceed 180 days.

(e) All licenses and permits shall expire on the last day of December of each year. A license or permit may be renewed without paying a late fee on or before the first day of February immediately following expiration. After that date, a license or permit may be renewed by paying a late fee as provided in G.S. 90-210.52 in addition to the annual renewal fee. Licenses and permits that remain expired six months or more require a new application for renewal. Licenses and permits are not transferable. A new application for a license or permit shall be made to the Board within 30 days following a change of ownership of more than fifty percent (50%) of the business.

(f) No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization, or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and operated by a crematory licensee subject to the restrictions and limitations of this Article or unless otherwise permitted by statute.

(g) Whenever the Board finds that an owner, partner, crematory manager, member, officer, or any crematory technician of a crematory licensee or any applicant to become a crematory licensee, or that any authorized employee, agent, or representative has violated any provision of this Article, or is guilty of any of the following acts, and when the Board also finds that the crematory operator or applicant has thereby become unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license, in accordance with Chapter 150B of the General Statutes:

(1) Conviction of a felony or a crime involving fraud or moral turpitude.

(2) Fraud or misrepresentation in obtaining or renewing a license or in the practice of cremation.

(3) False or misleading advertising.

(4) Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this subdivision shall not be construed to prohibit general advertising by the licensee.

(5) Employment directly or indirectly of any agent, assistant, or other person on a part-time or full-time basis or on commission for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee.

(6) The direct or indirect payment or offer of payment of a commission by the licensee or the licensee's agent, assistant, or employees for the purpose of securing business.

(7) Gross immorality, including being under the influence of alcohol or drugs while performing cremation services.

(8) Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material published or caused to be published by the licensee.

(9) Failing to treat a dead human body with respect at all times.

(10) Violating or cooperating with others to violate any of the provisions of this Article or of the rules of the Board.

(11) Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of dead human bodies.

(12) Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully entitled to the custody thereof, except as provided in G.S. 90-210.51(e).

(13) Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

(14) Practicing funeral directing, embalming, or funeral service without a license.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than five thousand dollars ($5,000).

(h) Where the Board finds a licensee is guilty of one or more of the acts or omissions listed in subsection (g) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150B of the General Statutes. In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars ($5,000) in conjunction with the probation.

(i) The Board may hold hearings in accordance with the provisions of this Article and Chapter 150B of the General Statutes. The Board shall conduct any such hearing. The Board shall constitute an "agency" under Article 3A of Chapter 150B of the General Statutes with respect to proceedings initiated pursuant to this Article. The Board is empowered to regulate and inspect crematories and crematory licensees and to enforce as provided by law the provisions of this Article and the rules adopted hereunder. Any crematory that, upon inspection, is found not to meet any of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain whether the deficiency or other violation has been corrected.

In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation, or proceeding conducted by it. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas, and other papers given to them by the President of the Board for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor.

"**§ 90-210.44. Authorizing agent.**

(a) The following person, in the priority list below, shall have the right to serve as an "authorizing agent":

(1) An individual at least 18 years of age may authorize the cremation and disposition of the individual's own dead body in a written will, pursuant to health care power of attorney to the extent provided in Article 3 of Chapter 32 of the General Statues, pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old. When an individual has authorized his or her own cremation and disposition in accordance with this subsection, the individual or institution designated by that individual shall act as the authorizing agent for that individual.

(2) If a decedent has left no written authorization for the cremation and disposition of the decedent's body as permitted under subdivision (1) of this subsection, the following competent persons in the order listed may authorize the type, method, place, cremation, and disposition of the decedent's body:

a. The surviving spouse.

b. A majority of the surviving children who are at least 18 years of age and can be located after reasonable efforts.

c. The surviving parents.

d. A majority of the surviving siblings who are at least 18 years of age and can be located after reasonable efforts.

e. A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate who are at least 18 years of age and can be located after reasonable efforts.

f. A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the cremation and disposition.

g. In the case of indigents or any other individuals whose final disposition is the responsibility of the State or any of its instrumentalities, a public administrator, medical examiner, coroner, State-appointed guardian, or any other public official charged with arranging the final disposition of the decedent may serve as the authorizing agent.

h. In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with making arrangements for the final disposition of the decedent, a representative of such institution may serve as the authorizing agent in the absence of any of the above.

i. In the absence of any of the above, any person willing to assume responsibility as authorizing agent, as specified in this act.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to cause or prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63.

(b) A person who does not exercise his or her right to dispose of the decedent's body under subdivision (a)(2) of this section within five days of notification or 10 days from date of death, whichever is earlier, shall be deemed to have waived his or her right to authorize disposition of the decedent's body or to contest disposition in accordance with this section.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the cremation and disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the cremation and disposition, a person listed in subdivision (a)(2) of this section may authorize the cremation and disposition as if the individual were deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes.

"**§ 90-210.45. Authorization to cremate.**

(a) A crematory licensee shall not cremate human remains until it has received a cremation authorization form signed by an authorizing agent. The cremation authorization form shall be prescribed by the Board and shall contain at a minimum the following information:

(1) The identity of the human remains and confirmation that the human remains are in fact the individual so named.

(2) The time and date of death of the decedent.

(3) The name and address of the funeral establishment and/or the funeral director that obtained the cremation authorization.

(4) The name and address of the crematory to be in receipt of the human remains for the purpose of cremation.

(5) The name and address of the authorizing agent, the relationship between the authorizing agent and the decedent, and the date and time of signature of the authorizing agent.

(6) A representation that the authorizing agent does in fact have the right to authorize the cremation of the decedent and that the authorizing agent is not aware of any living person who has a superior priority right to that of the authorizing agent, as set forth in G.S. 90-210.44. Or, in the event that there is another living person who does have a superior priority right to that of the authorizing agent, a representation that the authorizing agent has made all reasonable efforts to contact such person, has been unable to do so, and has no reason to believe that such person would object to the cremation of the decedent.

(7) A representation that the authorizing agent has either disclosed the location of all living persons with an equal right to that of the authorizing agent, as set forth in G.S. 90-201.44, or does not know the location of any other living person with an equal right to that of the authorizing agent.

(8) Authorization for the crematory to cremate the human remains, including authorization to process or pulverize the cremated remains.

(9) A representation that the human remains do not contain a pacemaker or any other material or implant that may be potentially hazardous to the person performing the cremation.

(10) The name of the person authorized to receive the cremated remains from the crematory licensee.

(11) The manner in which final disposition of the cremated remains is to take place, if known. If the cremation authorization form does not specify final disposition in a grave, crypt, niche, or scattering area, then the form shall indicate that the cremated remains will be held by the crematory licensee for 30 days before they are disposed of, unless they are received from the crematory licensee prior to that time, in person, by the authorizing agent or his designee.

(12) The signature of the authorizing agent attesting to the accuracy of all representations contained on the cremation authorization form, except as set forth in subsection (b) of this section.

(13) If a cremation authorization form is being executed on a preneed basis, the cremation authorization form shall contain the disclosure required by G.S. 90-210.46. The authorizing agent may specify in writing religious practices that conflict with Article 13 of this Chapter. The crematory licensee and funeral director shall observe those religious practices except where they interfere with cremation in a licensed crematory as specified under G.S. 90-210.43 or the required documentation and record keeping.

(14) A licensed funeral director of the funeral establishment or crematory licensee that received the cremation authorization form shall also sign the cremation authorization form. Such individual shall not be responsible for any of the representations made by the authorizing agent, unless such individual has actual knowledge to the contrary, except for the information requested by subdivisions (a)(1), (2), (3), (4), and (9) of this section, which shall be considered to be representations of the individual. In addition, the funeral director shall warrant to the crematory that the human remains delivered to the crematory licensee are the human remains identified on the cremation authorization form with any other documentation required by this State, any county, or any municipality.

(b) An authorizing agent who signs a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth on the cremation authorization form, including that person's authority to order the cremation, except for the information required by subdivisions (a)(4) and (9) of this section, unless the authorizing agent has actual knowledge to the contrary. An authorizing agent signing a cremation authorization form shall be personally and individually liable for all damages occasioned thereby and resulting therefrom.

(c) A crematory licensee shall have the legal right to cremate human remains upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability for a crematory licensee that cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization, except for such crematory licensee's gross negligence, provided that the crematory licensee performs such functions in compliance with the provisions of this Article. There shall be no liability for a funeral establishment or licensee thereof that causes a crematory licensee to cremate human remains pursuant to such authorization, except for gross negligence, provided that the funeral establishment and licensee thereof and crematory licensee perform their respective functions in compliance with the provisions of this section.

(d) After the authorizing agent has executed a cremation authorization form and prior to the commencement of the cremation, the authorizing agent may revoke the authorization and instruct the crematory licensee to cancel the cremation and to release or deliver the human remains to another crematory licensee or funeral establishment. Such instructions shall be provided to the crematory licensee in writing. A crematory licensee shall honor any instructions given to it by an authorizing agent under this section, provided that it receives such instructions prior to commencement of the cremation of the human remains.

"**§ 90-210.46. Preneed cremation arrangements.**

(a) Any person, on a preneed basis, may authorize the person's own cremation and the final disposition of the person's cremated remains by executing, as the authorizing agent, a cremation authorization form on a preneed basis and having the form signed by two witnesses. The person shall retain a copy of this form, and a copy shall be sent to the funeral establishment and/or the crematory licensee. Any person

shall have the right to transfer or cancel this authorization at any time prior to the person's death by destroying the executed cremation authorization form and providing written notice to the party or parties that received the cremation authorization form.

(b) Any cremation authorization form executed by an individual as the individual's own authorizing agent on a preneed basis shall contain the following disclosure, which shall be completed by the authorizing agent:

/ / I do not wish to allow any of my survivors the option of canceling my cremation and selecting alternative arrangements, regardless of whether my survivors deem such a change to be appropriate.

/ / I wish to allow only the survivors whom I have designated below the option of canceling my cremation and selecting alternative arrangements or continuing to honor my wishes for cremation and purchasing services and merchandise if they deem such a change to be appropriate.

(c) Except as provided in subsection (b) of this section, at the time of the death of a person who has executed, as the authorizing agent, a cremation authorization form on a preneed basis, any person in possession of the executed form, and any person charged with making arrangements for the disposition of the decedent's human remains who has knowledge of the existence of the executed form, shall use the person's best efforts to ensure that the decedent's human remains are cremated and that the final disposition of the cremated remains is in accordance with the instructions contained on the cremation authorization form.

(d) If a crematory licensee is in possession of a completed cremation authorization form, executed on a preneed basis, and the crematory licensee is in possession of the designated human remains, then the crematory licensee shall be required to cremate the human remains and dispose of the human remains according to the instructions contained on the cremation authorization form. A crematory licensee that complies with the preneed cremation authorization form under these circumstances may do so without any liability. A funeral establishment or licensee thereof that causes a crematory licensee to act in accordance with the preneed cremation authorization form under these circumstances may do so without any liability.

(e) Any preneed contract sold by, or preneed arrangements made with, a funeral establishment that includes a cremation shall specify the final disposition of the cremated remains, pursuant to G.S. 90-210.50. In the event that no different or inconsistent instructions are provided to the crematory licensee by the authorizing agent at the time of death, the crematory licensee shall be authorized to release or dispose of the cremated remains as indicated in the preneed agreement. Upon compliance with the terms of the preneed agreement, the crematory licensee, and any funeral establishment or licensee thereof who caused the crematory licensee to act in compliance with the terms of the preneed agreement, shall be discharged from any legal obligation concerning such cremated remains.

(f) The provisions of this section shall not apply to any cremation authorization form or preneed contract executed prior to the effective date of this act. Any funeral establishment, however, with the written approval of the authorizing agent or person

who executed the preneed contract, may designate that such cremation authorization form or preneed contract shall be subject to this act.

~~"§ 90-210.44. Authorization and record keeping.~~

~~The Board shall establish requirements for record keeping, authorizations, and cremation reports. It shall be a violation of this Article for any crematory operator to fail to comply with the requirements.~~

"**§ 90-210.47. Record keeping.**

(a) The crematory licensee shall furnish to the person who delivers such human remains to the crematory licensee a receipt, signed by both the crematory licensee and the person who delivers the human remains, showing the date and time of the delivery; the type of casket or cremation container that was delivered; the name of the person from whom the human remains were received and the name of the funeral establishment or other entity with whom such person is affiliated; the name of the person who received the human remains on behalf of the crematory licensee; and the name of the decedent. The crematory licensee shall retain a copy of this receipt in its permanent records for three years.

(b) Upon its release of cremated remains, the crematory licensee shall furnish to the person who receives such cremated remains from the crematory licensee a receipt, signed by both the crematory licensee and the person who receives the cremated remains, showing the date and time of the release; the name of the person to whom the cremated remains were released and the name of the funeral establishment, cemetery, or other entity with whom such person is affiliated; the name of the person who released the cremated remains on behalf of the crematory licensee; and the name of the decedent. The crematory shall retain a copy of this receipt in its permanent records for three years.

(c) A crematory licensee shall maintain at its place of business a record of all forms required by the Board of each cremation that took place at its facility for three years.

(d) The crematory licensee shall maintain a record for three years of all cremated remains disposed of by the crematory licensee in accordance with G.S. 90-210.46(d).

(e) Upon completion of the cremation, the crematory licensee shall issue a certificate of cremation.

(f) All records that are required to be maintained under this Article shall be subject to inspection by the Board or its agents upon request.

"**§ 90-210.48. Cremation containers.**

(a) No crematory licensee shall make or enforce any rules requiring that any human remains be placed in a casket before cremation or that human remains be cremated in a casket, nor shall any crematory licensee refuse to accept human remains for cremation for the reason that they are not in a casket.

(b) No crematory licensee shall make or enforce any rules requiring that any cremated remains be placed in an urn or receptacle designed to permanently encase the cremated remains after the cremation process has been performed.

~~"§ 90-210.45. Cremation procedures.~~

~~(a) No human body shall be cremated before the crematory operator receives a death certificate signed by the attending physician or an authorization for cremation signed by a medical examiner.~~

~~(b) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious or communicable and dangerous disease as listed by the Commission of Health Services pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred. In the event such death comes under the jurisdiction of the medical examiner, the human remains shall not be received by the crematory operator until authorization to cremate has been received in writing from the medical examiner of the county in which the death occurred. In the event the crematory operator is authorized to perform funerals as well as cremation, this restriction on the receipt of human remains shall not be applicable.~~

~~(c) No unauthorized person shall be permitted in the crematory area while any human remains are in the crematory area awaiting cremation, being cremated, or being removed from the cremation chamber. Relatives of the deceased, the authorizing agent, medical examiners and law enforcement officers in the execution of their duties shall be authorized to have access to the holding facility and crematory facility.~~

~~(c1) Human remains shall be cremated only while enclosed in a cremation container.~~

~~(d) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden.~~

~~(d1) Every crematory shall have a holding facility, within or adjacent to the crematory, designated for the retention of human remains prior to cremation. The holding facility must comply with any applicable public health laws and rules and must meet all of the standards established pursuant to rules adopted by the Board.~~

~~(e) Crematory operators shall comply with standards established by the Board for the reduction and pulverization of human remains by the cremation process.~~

"**§ 90-210.49. Cremation procedures.**

(a) In deaths certified by the attending physician, the body shall not be cremated before the crematory licensee receives a death certificate signed by the attending physician, which shall contain at a minimum the following information:

(1) Decedent's name;
(2) Date of death;
(3) Date of birth;
(4) Sex;
(5) Place of death;
(6) Facility name (if not institution, give street and number);
(7) County of death;
(8) City of death; and
(9) Time of death (if known).

(b) When required by G.S. 130A-388 and the rules adopted pursuant to that section or by successor statute and the rules pursuant to it, a cremation authorization

form signed by a medical examiner shall be received by the crematory prior to cremation.

(c) In deaths coming under full investigation by the Office of the Chief Medical Examiner, a burial-transit permit/cremation authorization form must be received by the crematory before cremation.

(d) No body shall knowingly be cremated with a pacemaker or defibrillator or other potentially hazardous implant or condition in place. The authorizing agent for the cremation of the human remains shall be responsible for taking all necessary steps to ensure that any pacemaker or defibrillator or other potentially hazardous implant or condition is removed or corrected prior to cremation. If an authorizing agent informs the funeral director and the crematory licensee on the cremation authorization form of the presence of a pacemaker or defibrillator or other potentially hazardous implant or condition in the human remains, then the funeral director shall be responsible for ensuring that all necessary steps have been taken to remove the pacemaker or defibrillator or other potentially hazardous implant or to correct the hazardous condition before delivering the human remains to the crematory.

(e) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious, or communicable and dangerous disease as listed by the Commission of Health Services, pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred.

(f) No unauthorized person shall be permitted in view of the cremation chamber or in the holding and processing facility while any human remains are being removed from the cremation container, processed, or pulverized. Relatives of the deceased and their invitees, the authorizing agent and the agent's invitees, medical examiners, Inspectors of the North Carolina Board of Funeral Service, and law enforcement officers in the execution of their duties shall be authorized to have access to the crematory area, subject to the rules adopted by the crematory licensee governing the safety of such individuals.

(g) Human remains shall be cremated only while enclosed in a cremation container. Upon completion of the cremation, and insofar as is possible, all of the recoverable residue of the cremation process shall be removed from the cremation chamber. Insofar as is possible, all residue of the cremation process shall then be separated from any foreign residue or anything else other than bone fragments and then be processed by pulverization so as to reduce the cremated remains to unidentifiable particles. Any foreign residue and anything other than the particles of the cremated remains shall be removed from the cremated remains as far as possible and shall be disposed of by the crematory licensee. This section does not apply where law otherwise provides for commingling of human remains. The fact that there is incidental and unavoidable residue in the cremation chamber used in a prior cremation is not a violation of this subsection.

(h) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden.

(i) Every crematory shall have a holding and processing facility, within the crematory, designated for the retention of human remains prior to cremation. The holding and processing facility must comply with any applicable public health laws and rules and must meet all of the standards established pursuant to rules adopted by the Board.

(j) Crematory licensees shall comply with standards established by the Board for the processing and pulverization of human remains by cremation.

(k) Nothing in this Article shall require a crematory licensee to perform a cremation that is impossible or impractical to perform.

(l) The cremated remains with proper identification shall be placed in a temporary container or the urn selected or provided by the authorizing agent. The temporary container or urn contents shall not be contaminated with any other object, unless specific authorization has been received from the authorizing agent or as provided in subsection (g) of this section.

(m) If the cremated remains are greater than the dimensions of a temporary container or urn, the excess cremated remains shall be returned to the authorizing agent or its representative in a separate container or urn.

(n) If the cremated remains are to be shipped, the temporary container or urn shall be packed securely in a suitable shipping container that complies with the requirements of the shipper. Cremated remains shall be shipped only by a method which has an internal tracing system available and which provides a receipt signed by the person accepting delivery, unless otherwise authorized in writing by the authorizing agent. Cremated remains shall be shipped to the proper address as stated on the cremation authorization form signed by the authorizing agent.

~~"§ 90-210.46. Disposition of cremated remains.~~

~~(a) The authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. The crematory operator may store or retain cremated remains as directed by the authorizing agent. Records of retention and disposition of cremated remains shall be kept by the crematory operator pursuant to G.S. 90-210.44.~~

~~(b) The authorizing agent is responsible for the disposition of the cremated remains. If, after a period of 30 days from the date of cremation, the authorizing agent or his representative has not specified the ultimate disposition or claimed the cremated remains, the crematory operator or the person in possession of the cremated remains may dispose of the cremated remains only in a manner permitted in this section. The authorizing agent shall be responsible for reimbursing the crematory operator for all reasonable expenses incurred in disposing of the cremated remains pursuant to this section. A record of such disposition shall be made and kept by the person making such disposition. Upon disposing of cremated remains in accordance with this section, the crematory operator or person in possession of the cremated remains shall be discharged from any legal obligation or liability concerning such cremated remains.~~

~~(c) In addition to the disposal of cremated remains in a crypt, niche, grave, or scattering garden located in a dedicated cemetery, or by scattering over uninhabited public land, the sea or other public waterways pursuant to subsection (f) of this section,~~

~~cremated remains may be disposed of in any manner on the private property of a consenting owner, upon direction of the authorizing agent. If cremated remains are to be disposed of by the crematory operator on private property, other than dedicated cemetery property, the authorizing agent shall provide the crematory operator with the written consent of the property owner.~~

~~(d) Except with the express written permission of the authorizing agent no person may:~~

~~(1) Dispose of or scatter cremated remains in such a manner or in such a location that the cremated remains are commingled with those of another person. This subdivision shall not apply to the scattering of cremated remains at sea or by air from individual closed containers or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for such purposes.~~

~~(2) Place cremated remains of more than one person in the same closed container. This subdivision shall not apply to placing the cremated remains of members of the same family in a common closed container designed for the cremated remains of more than one person.~~

~~(e) Cremated remains shall be delivered by the crematory operator to the individual specified by the authorizing agent on the cremation authorization form. The representative of the crematory operator and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased, and the date, time, and place of the receipt. After this delivery, the cremated remains may be transported in any manner in this State, without a permit, and disposed of in accordance with the provisions of this Article.~~

~~(f) Cremated remains may be scattered over uninhabited public land, a public waterway or sea, subject to health and environmental standards, or on the private property of a consenting owner pursuant to subsection (c) of this section. A person may utilize a boat or airplane to perform such scattering. Cremated remains shall be removed from their closed container before they are scattered.~~

"**§ 90-210.50. Final disposition of cremated remains.**

(a) The authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. The crematory licensee may store or retain cremated remains as directed by the authorizing agent. Records of retention and disposition of cremated remains shall be kept by the crematory licensee pursuant to G.S. 90-210.47.

(b) The authorizing agent is responsible for the disposition of the cremated remains. If, after a period of 30 days from the date of cremation, the authorizing agent or the agent's representative has not specified the final disposition or claimed the cremated remains, the crematory licensee or the person in possession of the cremated remains may dispose of the cremated remains only in a manner permitted in this section. The authorizing agent shall be responsible for reimbursing the crematory licensee for all reasonable expenses incurred in disposing of the cremated remains pursuant to this section. A record of such disposition shall be made and kept by the person making the disposition. Upon disposing of cremated remains in accordance with this section, the

crematory licensee or person in possession of the cremated remains shall be discharged from any legal obligation or liability concerning such cremated remains.

(c) In addition to the disposal of cremated remains in a crypt, niche, grave, or scattering garden located in a dedicated cemetery, or by scattering over uninhabited public land, the sea, or other public waterways pursuant to subsection (f) of this section, cremated remains may be disposed of in any manner on the private property of a consenting owner, upon direction of the authorizing agent. If cremated remains are to be disposed of by the crematory licensee on private property, other than dedicated cemetery property, the authorizing agent shall provide the crematory licensee with the written consent of the property owner.

(d) Except with the express written permission of the authorizing agent, no person may:

(1) Dispose of or scatter cremated remains in such a manner or in such a location that the cremated remains are commingled with those of another person. This subdivision shall not apply to the scattering of cremated remains at sea or by air from individual closed containers or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for such purposes.

(2) Place cremated remains of more than one person in the same closed container. This subdivision shall not apply to placing the cremated remains of members of the same family in a common closed container designed for the cremated remains of more than one person with the written consent of the family.

(e) Cremated remains shall be released by the crematory licensee to the individual specified by the authorizing agent on the cremation authorization form. The representative of the crematory licensee and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased, and the date, time, and place of the receipt, and contain a representation that the handling of the final disposition will be in a proper manner. After this delivery, the cremated remains may be transported in any manner in this State, without a permit, and disposed of in accordance with the provisions of this Article.

(f) Cremated remains may be scattered over uninhabited public land, over a public waterway or sea, subject to health and environmental standards, or on the private property of a consenting owner pursuant to subsection (c) of this section. A person may utilize a boat or airplane to perform such scattering. Cremated remains shall be removed from their closed container before they are scattered.

~~"§ 90-210.47. Liability.~~

~~(a) Any person signing a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth in the cremation authorization form, including the identity of the deceased whose remains are sought to be cremated and that person's authority to order such cremation.~~

~~(b) A crematory operator shall have authority to cremate human remains only upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability of a crematory operator that cremates human remains~~

~~pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization.~~

~~(c) A crematory operator shall not be responsible or liable for any valuables delivered to the crematory operator with human remains.~~

~~(d) A crematory operator shall not be liable for refusing to accept a body or to perform a cremation until it receives a court order or other suitable confirmation that a dispute has been settled if:~~

~~(1) It is aware of any dispute concerning the cremation of human remains;~~

~~(2) It has a reasonable basis for questioning any of the representations made by the authorizing agent; or~~

~~(3) For any other lawful reason.~~

~~(e) If a crematory operator is aware of any dispute concerning the release or disposition of the cremated remains, the crematory operator may refuse to release the cremated remains until the dispute has been resolved or the crematory operator has been provided with a court order authorizing the release or disposition of the cremated remains. A crematory operator shall not be liable for refusing to release or dispose of cremated remains in accordance with this subsection.~~

"**§ 90-210.51. Limitation of liability.**

(a) Any person signing a cremation authorization form as authorizing agent shall be deemed to warrant the truthfulness of any facts set forth in the cremation authorization form, including the identity of the deceased whose remains are sought to be cremated and that person's authority to order such cremation.

(b) A crematory licensee shall have authority to cremate human remains only upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability of a crematory licensee that cremates human remains pursuant to such authorization or that releases or disposes of the cremated remains pursuant to such authorization. A crematory licensee and funeral establishment or licensee thereof who causes the crematory licensee to act shall have no liability for the final disposition or manner in which the cremated remains are handled after the cremated remains are released in accordance with the directions of the authorizing agent.

(c) A crematory licensee shall not be responsible or liable for any valuables delivered to the crematory licensee with human remains.

(d) A crematory licensee shall not be liable for refusing to accept a body or to perform a cremation until it receives a court order or other suitable confirmation that a dispute has been settled if:

(1) It is aware of any dispute concerning the cremation of human remains;

(2) It has a reasonable basis for questioning any of the representations made by the authorizing agent; or

(3) For any other lawful reason.

(e) If a crematory licensee is aware of any dispute concerning the release or disposition of the cremated remains, the crematory licensee may refuse to release the cremated remains until the dispute has been resolved or the crematory licensee has been provided with a court order authorizing the release or disposition of the cremated

remains. A crematory licensee shall not be liable for refusing to release or dispose of cremated remains in accordance with this subsection. A crematory licensee may charge a reasonable storage fee if the dispute is not resolved within 30 days after it is received by the crematory licensee.

~~"§ 90-210.48. Fees.~~

~~(a) The Board may set and collect fees not to exceed the following amounts from licensed crematory operators and applicants:~~

~~(1)~~	~~Licensee application fee~~	~~$400.00~~
~~(2)~~	~~Annual renewal fee~~	~~150.00~~
~~(3)~~	~~Late renewal penalty~~	~~75.00~~
~~(4)~~	~~Re-inspection fee~~	~~100.00~~
~~(5)~~	~~Per cremation fee.~~	~~10.00~~
~~(6)~~	~~Late fee, per cremation.~~	~~10.00~~
~~(7)~~	~~Late fee, cremation report~~	~~75.00 per month.~~

~~(b) The funds collected pursuant to this Article shall become part of the general fund of the Board. The cost of the maintenance of the Crematory Authority shall be deemed a general expense of the Board. The Board shall keep an accurate accounting of all the receipts and expenditures made pursuant to this Article and shall provide a current report of such to the Crematory Authority biannually.~~

"**§ 90-210.52. Fees.**

(a) The Board may set and collect fees not to exceed the following amounts from crematory licensees, crematory manager permit holders, and applicants:

(1)	Licensee application fee	$400.00
(2)	Annual renewal fee	150.00
(3)	Late renewal fee	75.00
(4)	Reinspection fee	100.00
(5)	Per cremation fee	10.00
(6)	Late fee, per cremation	10.00
(7)	Late fee, cremation report	75.00 per month
(8)	Crematory manager permit application fee	150.00
(9)	Annual crematory manager permit renewal fee	40.00.

(b) The funds collected pursuant to this Article shall become part of the general fund of the Board.

~~"§ 90-210.49. Crematory operator authority.~~

~~(a) A crematory operator may employ a licensed funeral director for the purpose of arranging cremations with the general public, transporting human remains to the crematory, and processing all necessary paper work. Nothing in this provision may be construed to require a licensed funeral director to perform any functions not otherwise required by law to be performed by a licensed funeral director.~~

~~(b) A crematory operator may adopt reasonable rules consistent with this Article for the management and operation of a crematory. Nothing in this subsection may be construed to prevent a crematory operator from adopting rules which are more stringent than the provisions of this Article.~~

~~(c) Nothing in this Article shall prohibit or require the performance of cremations by crematory operators for or directly with the public, or exclusively for or through licensed funeral directors.~~

~~(d) Nothing in this Article may be construed to prohibit a crematory operator from transporting human remains.~~

~~(e) Nothing in this Article may be construed to relieve the holder of a license issued hereunder from obtaining any other licenses or permits required by law.~~

"**§ 90-210.53. Crematory licensee rights.**

(a) A crematory licensee may adopt reasonable rules consistent with this Article for the management and operation of a crematory. Nothing in this subsection may be construed to prevent a crematory licensee from adopting rules which are more stringent than the provisions of this Article.

(b) Nothing in this Article may be construed to relieve the crematory licensee from obtaining any other licenses or permits required by law.

(c) Nothing in this Article shall prohibit or require the performance of cremations by crematory licensees or crematory managers for or directly with the public or exclusively for or through licensed funeral directors.

~~"§ 90-210.50. Rule making; applicability; violations; and prohibitions of Article.~~

~~(a) The Board is authorized to adopt and promulgate such rules for the carrying out and enforcement of the provisions of this Article as may be necessary and as are consistent with the laws of this State and of the United States. The Board shall adopt rules only after consideration of the Crematory Authority's suggested rules pursuant to G.S. 90-210.42(a). The Board may perform such other acts and exercise such other powers and duties as may be provided in this Article, in Article 13A of this Chapter, and otherwise by law and as may be necessary to carry out the powers herein conferred.~~

~~(b) The provisions of this Article shall not apply to the cremation of human remains and medical waste performed by the North Carolina Anatomical Commission, licensed hospitals and medical schools, and the office of the Chief Medical Examiner when the disposition of such human remains and medical waste is the legal responsibility of said institutions.~~

~~(c) A violation of any of the provisions of this Article is a Class 2 misdemeanor.~~

~~(d) No person, firm, or corporation may request or authorize cremation or cremate a dead human body when he has information indicating a crime or violence of any sort in connection with the cause of death unless such information has been conveyed to the State or county medical examiner and permission from the State or county medical examiner to cremate has thereafter been obtained.~~

"**§ 90-210.54. Rulemaking, applicability, violations, and prohibitions of Article.**

(a) The Board is authorized to adopt and promulgate such rules for the carrying out and enforcement of the provisions of this Article as may be necessary and as are consistent with the laws of this State and of the United States. The Board may develop a Standard Cremation Authorization Form and procedures for its execution that shall be used by the crematory licensee subject to this Article, unless a crematory has its own form approved by the Board. A crematory licensee that uses its own approved cremation authorization form must have the cremation authorization form reapproved if changed

or after amendments are made to this Article or the rules adopted by the Board related to cremation authorization forms. The Board may perform such other acts and exercise such other powers and duties as may be provided in this Article, in Article 13A of this Chapter, and otherwise by law and as may be necessary to carry out the powers herein conferred.

(b) The provisions of this Article shall not apply to the cremation of medical waste performed by the North Carolina Anatomical Commission, licensed hospitals and medical schools, and the office of the Chief Medical Examiner when the disposition of such medical waste is the legal responsibility of the institutions.

(c) A violation of any of the provisions of this Article is a Class 2 misdemeanor.

(d) No person, firm, or corporation may request or authorize cremation or cremate human remains when the person, firm, or corporation has information indicating a crime or violence of any sort in connection with the cause of death unless such information has been conveyed to the State or county medical examiner and permission from the State or county medical examiner to cremate the human remains has thereafter been obtained."

SECTION 3. G.S. 90-210.20(e1) reads as rewritten:

"(e1) "Funeral chapel" means a chapel or other facility separate from the funeral establishment premises for the primary purpose of reposing of dead human bodies, visitation or funeral ceremony that is owned, operated, or maintained by a funeral establishment or other licensee under this Article, and that does not use the word "funeral" in its name, on a sign, in a directory, in advertising or in any other manner; in which or on the premises of which there is not displayed ~~or offered for sale~~ any caskets or other funeral merchandise; in which or on the premises of which there is not located any ~~funeral business office or a~~ preparation room; ~~in which or on the premises of which no funeral sales, financing, or arrangements are made;~~ and which no owner, operator, employee, or agent thereof represents the chapel to be a funeral establishment."

SECTION 4. G.S. 90-210.22 reads as rewritten:

"**§ 90-210.22. Required meetings of the Board.**

The Board shall hold at least ~~two~~ four meetings in each ~~year at which examinations shall be given to qualified applicants for licenses.~~year. In addition, the Board may meet as often as the proper and efficient discharge of its duties shall require. Five members shall constitute a quorum."

SECTION 5.(a) G.S. 90-210.23(b) reads as rewritten:

"**§ 90-210.23. Powers and duties of the Board.**

...

(b) The Board shall elect from its members a president, a vice-president and a secretary, no two offices to be held by the same person. The president and vice-president and secretary shall serve for one year and until their successors shall be elected and ~~qualify.~~ qualified. The Board shall have authority to engage adequate staff as deemed necessary to perform its duties."

SECTION 5.(b) G.S. 90-210.23 is amended by adding the following new subsections to read:

"(h1) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing, and sale of real property. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(h2) The Board may employ legal counsel and clerical and technical assistance, and fix the compensation therefor, and incur such other expenses as may be deemed necessary in the performance of its duties and the enforcement of the provisions of this Article or as otherwise required by law and as may be necessary to carry out the powers herein conferred."

SECTION 6.(a) G.S. 90-210.24(a) reads as rewritten:

"**§ 90-210.24. Inspector.**

(a) The Board may appoint one or more agents who shall serve at the pleasure of the Board and who shall have the title "Inspector of the ~~Board of Mortuary Science of North Carolina".~~North Carolina Board of Funeral Service." No person is eligible for appointment as inspector unless at the time of ~~his~~ the appointment ~~he~~ the person is licensed under this Article as a funeral service licensee."

SECTION 6.(b) G.S. 90-210.24 is amended by adding the following new subsection to read:

"(e) The Board's Executive Director shall have all the powers of an Inspector of the North Carolina Board of Funeral Service."

SECTION 7. G.S. 90-210.25 reads as rewritten:

"**§ 90-210.25. Licensing.**

(a) Qualifications, Examinations, Resident Traineeship and Licensure. –

(1) To be licensed for the practice of funeral directing under this Article, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Be a graduate of a Funeral Director Program at a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction, including the subjects set out in sub-part e.1. of this subdivision, as prescribed by a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education.

d. Have completed 12 months of resident traineeship as a funeral director, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.

e. Have passed an oral or written funeral director examination on the following subjects:
1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.
2. Repealed by 1997-399, s. 5.
3. Laws of North Carolina and rules of the Board ~~of Mortuary Science~~ and other agencies dealing with the care, transportation and disposition of dead human bodies.

(2) To be licensed for the practice of embalming under this Article, a person must:
a. Be at least 18 years of age.
b. Be of good moral character.
c. Be a graduate of a mortuary science college approved by the Board.
d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.
e. Have passed an oral or written embalmer examination on the following subjects:
1. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
2. Repealed by 1997-399, s. 6.
3. Laws of North Carolina and rules of the Board ~~of Mortuary Science~~ and other agencies dealing with the care, transportation and disposition of dead human bodies.

(3) To be licensed for the practice of funeral service under this Article, a person must:
a. Be at least 18 years of age.
b. Be of good moral character.
c. Be a graduate of and receive an associate degree from a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education. Have completed a minimum of ~~32~~ 60 semester hours or ~~48~~ 90 quarter hours of instruction, including the subjects set out in sub-part e.1. of this subdivision, as prescribed by a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education.
d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set

out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivison c. of this subdivision.

e. Have passed an oral or written funeral service examination on the following subjects:

1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.
2. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
3. Repealed by 1997-399, s. 7.
4. Laws of North Carolina and rules of the Board ~~of Mortuary Science~~ and other agencies dealing with the care, transportation and disposition of dead human bodies.

(4) a. A person desiring to become a resident trainee shall apply to the Board on a form provided by the Board. The application shall state that the applicant is not less than 18 years of age, of good moral character, and is the graduate of a high school or the equivalent thereof, and shall indicate the licensee under whom the applicant expects to train. A person training to become an embalmer may serve under either a licensed embalmer or a funeral service licensee. A person training to become a funeral director may serve under either a licensed funeral director or a funeral service licensee. A person training to become a funeral service licensee shall serve under a funeral service licensee. The application must be sustained by oath of the applicant and be accompanied by the appropriate fee. When the Board is satisfied as to the qualifications of an applicant it shall instruct the secretary to issue a certificate of resident traineeship.

b. When a resident trainee leaves the proctorship of the licensee under whom the trainee has worked, the licensee shall file with the Board an affidavit showing the length of time served with the licensee by the trainee, and the affidavit shall be made a matter of record in the Board's office. The licensee shall deliver a copy of the affidavit to the trainee.

c. A person who has not completed the traineeship and wishes to do so under a licensee other than the one whose name appears on the original certificate may reapply to the Board for ~~approval, without payment of an additional fee.~~approval.

d. A certificate of resident traineeship shall be signed by the resident trainee and upon payment of the renewal fee shall be renewable one year after the date of original registration; but the certificate may not be renewed more than ~~one time.~~ two times. The Board shall mail to each registered trainee at his last

known address a notice that the renewal fee is due and that, if not paid within 30 days of the notice, the certificate will be canceled. A ~~penalty,~~ late fee, in addition to the renewal fee, shall be charged for a late renewal, but the renewal of the registration of any resident trainee who is engaged in the active military service of the United States at the time renewal is due may, at the discretion of the Board, be held in abeyance for the duration of that service without penalties. No credit shall be allowed for the 12-month period of resident traineeship that shall have been completed more than ~~three~~ five years preceding the examination for a license.

e. All registered resident trainees shall report to the Board at least once every month during traineeship upon forms provided by the Board listing the work which has been completed during the preceding month of resident traineeship. The data contained in the reports shall be certified as correct by the licensee under whom the trainee has served during the period and by the licensed person who is managing the funeral service establishment. Each report shall list the following:
   1. For funeral director trainees, the conduct of any funerals during the relevant time period,
   2. For embalming trainees, the embalming of any bodies during the relevant time period,
   3. For funeral service trainees, both of the activities named in 1 and 2 of this subsection, engaged in during the relevant time period.

f. To meet the resident traineeship requirements of G.S. 90-210.25(a)(1), G.S. 90-210.25(a)(2) and G.S. 90-210.25(a)(3) the following must be shown by the affidavit(s) of the licensee(s) under whom the trainee worked:
   1. That the funeral director trainee has, under supervision, assisted in directing at least 25 funerals during the resident traineeship,
   2. That the embalmer trainee has, under supervision, assisted in embalming at least 25 bodies during the resident traineeship,
   3. That the funeral service trainee has, under ~~supervision~~ supervision, assisted in directing at least 25 funerals and, under supervision, assisted in embalming at least 25 bodies during the resident traineeship.

g. The Board may suspend or revoke a certificate of resident traineeship for violation of any provision of this Article.

h. Each sponsor for a registered resident trainee must during the period of sponsorship be actively employed with a funeral

establishment. The traineeship shall be a primary vocation of the trainee.

i. Only one resident trainee may register and serve at any one time under any one person licensed under this Article.

j., k. Repealed by Session Laws 1991, c. 528, s. 4.

l. The Board shall register no more than one resident trainee at a funeral establishment that served 100 or fewer families during the 12 months immediately preceding the date of the application, and shall register no more than one resident trainee for each additional 100 families served at the funeral establishment during the 12 months immediately preceding the date of the application.

(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

a. All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

b. The holder of any license issued by the Board who shall fail to renew the same on or before ~~January 31~~February 1 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an

applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom.

c. All licensees now or hereafter licensed in North Carolina shall take continuing education courses ~~of study~~ in subjects relating to the practice of the profession for which they are licensed, to the end that ~~new techniques, scientific and clinical advances, the achievements of research and~~ the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.

d. As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least ~~five~~ 10 hours of continuing education courses, of which the Board may require licensees to take up to three hours specified by the Board and two hours may be self-study. All continuing education courses must be approved by the Board prior to enrollment. A licensee who completes more than ~~five~~ 10 hours in a year may carry over a maximum of ~~five~~ 10 hours as a credit to the following year's requirement. A licensee who is issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year.

e. The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North Carolina, and the Board shall waive the requirement for all licensees who were licensed on or before December 31, 2003, and have been licensed in North Carolina for a continuous period of 25 years or more, for all licensees who are licensed on or after January 1, 2004, who have been licensed for a continuous period of 25 years or more and have attained the age of 60 years, and for all licensees who are, at the time of renewal, members of the General Assembly.

f. The Board shall cause to be established and offered to the licensees, each calendar year, at least ~~five~~ eight hours of continuing education ~~courses in subjects encompassing the license categories of embalming, funeral directing and funeral service.~~courses. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.

g. Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not

be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee.

h. The Department of Justice may provide a criminal record check to the Board for a person who has applied for a new or renewal license, or certification through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision.

(a1) Inactive Licenses. – Any person holding a license issued by the Board for funeral directing, for embalming, or for the practice of funeral service may apply for an inactive license in the same category as the active license held. The inactive license is renewable annually. Continuing education is not required for the renewal of an inactive license. The only activity that a holder of an inactive license may engage in is to vote pursuant to G.S. 90-210.18(c)(2). The holder of an inactive license may apply for an active license in the same category, and the Board shall issue an active license if the applicant has completed in North Carolina a total number of hours of accredited continuing education equal to five times the number of years the applicant held the inactive license. No application fee is required for the reinstatement of an active license pursuant to this subsection. The holder of an inactive license who returns to active status shall surrender the inactive license to the Board.

(a2) In order to engage in the practice of funeral directing or funeral service, such a licensee must own, be employed by, or otherwise be an agent of a licensed funeral establishment; except that such a licensee may practice funeral directing or funeral service if:

(1) Employed by a college of mortuary science; or

(2) The licensee:

a. Maintains all of his or her business records at a location made known to the Board and available for inspection by the Board under the same terms and conditions as the business records of a licensed funeral establishment;

b. Complies with rules and regulations imposed on funeral establishments and the funeral profession that are designed to protect consumers, to include, but not be limited to, the Federal Trade Commission's laws and rules requiring General Price Lists and Statements of Goods and Services; and

c. Pays to the Board the funeral establishment license fee required by law and set by the Board.

Nothing in this subdivision shall preclude a licensee from arranging cremations and cremating human remains while employed by a crematory.

(b) Persons Licensed under the Laws of Other Jurisdictions. –

(1) The Board shall grant licenses to funeral directors, embalmers and funeral service licensees, licensed in other states, territories, the District of Columbia, and foreign countries, when it is shown that the applicant holds a valid license as a funeral director, embalmer or funeral service licensee issued by the other jurisdiction, has demonstrated knowledge of the laws and ~~regulations~~ rules governing the profession in North Carolina and has submitted proof of his good moral character; and either that the applicant has continuously practiced the profession in the other jurisdiction for at least three years immediately preceding his application, or the Board has determined that the licensing requirements for the other jurisdiction are substantially similar to those of North Carolina.

(2) The Board shall periodically review the mortuary science licensing requirements of other jurisdictions and shall determine which licensing requirements are substantially similar to the requirements of North Carolina.

(3) The Board may issue special permits, to be known as courtesy cards, permitting nonresident funeral directors, embalmers and funeral service licensees to remove bodies from and to arrange and direct funerals and embalm bodies in this State, but these privileges shall not include the right to establish a place of business in or engage generally in the business of funeral directing and embalming in this State. Except for special permits issued by the Board for teaching continuing

education programs and for work in connection with disasters, no special permits may be issued to nonresident funeral directors, embalmers, and funeral service licensees from states that do not issue similar courtesy cards to persons licensed in North Carolina pursuant to this Article.

(c) Registration, Filing and Transportation. –

(1) The holder of any license granted by this State for those within the funeral service profession or renewal thereof provided for in this Article shall cause registration to be filed in the office of the board of health of the county or city in which he practices his profession, or if there be no board of health in such county or city, at the office of the clerk of the superior court of such county. All such licenses, certificates, duplicates and renewals thereof shall be displayed in a conspicuous place in the funeral establishment where the holder renders service.

(2) It shall be unlawful for any railway agent, express agency, baggage master, conductor or other person acting as such, to receive the dead body of any person for shipment or transportation by railway or other public conveyance, to a point outside of this State, unless the body is accompanied by a burial-transit permit.

(3) The "transportation or removal of a dead human body" shall mean the removal of a dead human body for a fee from the location of the place of death or discovery of death or the transportation of the body to or from a medical facility, funeral establishment or facility, crematory or related holding facility, place of final disposition, or place designated by the Medical Examiner for examination or autopsy of the dead human body.

(4) Any individual, not otherwise exempt from this subsection, shall apply for and receive a permit from the Board before engaging in the transportation or removal of a dead human body in this State. Unless otherwise exempt from this subsection, no corporation or other business entity shall engage in the transportation or removal of a dead human body unless it has in its employ at least one individual who holds a permit issued under this section. No individual permit holder shall engage in the transportation or removal of a dead human body for more than one person, firm, or corporation without first providing the Board with written notification of the name and physical address of each such employer.

(5) The following persons shall be exempt from the permit requirements of this section but shall otherwise be subject to subdivision (9) of this subsection and any rules relating to the proper handling, care, removal, or transportation of a dead human body:

a. Licensees under this Article and their employees.

b. Employees of common carriers.

c. Except as provided in sub-subdivision (6)c. of this section, employees of the State and its agencies and employees of local governments and their agencies.
d. Funeral directors licensed in another state and their employees.

(6) The following persons shall be exempt from this section:
a. Emergency medical technicians, rescue squad workers, volunteer and paid firemen, and law enforcement officers.
b. Employees of public or private hospitals, nursing homes, or long-term care facilities, while handling a dead human body within such facility or while acting within the scope of their employment.
c. State and county medical examiners and their investigators.
d. Any individual transporting cremated remains.
e. Any individual transporting or removing a dead human body of their immediate family or next of kin.
f. Any individual who has exhibited special care and concern for the decedent.

(7) Individuals eligible to receive a permit under this section for the transportation or removal of a dead human body for a fee, shall:
a. Be at least 18 years of age.
b. Possess and maintain a valid drivers license issued by this State and provide proof of all liability insurance required for the registration of any vehicle in which the person intends to engage in the business of the removal or transportation of a dead human body.
c. Affirmatively state under oath that the person has read and understands the statutes and rules relating to the removal and transportation of dead human bodies and any guidelines as may be adopted by the Board.
d. Provide three written character references on a form prescribed by the Board, one of which must be from a licensed funeral director.
e. Be of good moral character.

(8) The permit issued under this section shall expire on December 31 of each year. The application fee for the individual permit shall not exceed one hundred twenty-five dollars ($125.00). A fee, not to exceed one hundred dollars ($100.00), in addition to the renewal fee not to exceed seventy-five dollars ($75.00), shall be charged for any application for renewal received by the Board after February 1 of each year.

(9) No person shall transport a dead human body in the open cargo area or passenger area of a vehicle or in any vehicle in which the body may be viewed by the public. Any person removing or transporting a dead human body shall either cover the body, place it upon a stretcher

designed for the purpose of transporting humans or dead human bodies in a vehicle, and secure such stretcher in the vehicle used for transportation, or shall enclose the body in a casket or container designed for common carrier transportation, and secure the casket or container in the vehicle used for transportation. No person shall fail to treat a dead human body with respect at all times. ~~use profanity, indecent, or obscene language in the presence of a dead human body.~~ No person shall take a photograph or video recording of a dead human body without the consent of a member of the deceased's immediate family or next of ~~kin.~~kin or other authorizing agent.

(10) The Board may adopt rules under this section including permit application procedures and the proper procedures for the removal, handling, and transportation of dead human bodies. The Board shall consult with the Office of the Chief Medical Examiner before initiating rule making under this section and before adopting any rules pursuant to this section. Nothing in this section prohibits the Office of the Chief Medical Examiner from adopting policies and procedures regarding the removal, transportation, or handling of a dead human body under the jurisdiction of that office that are more stringent than the laws in this section or any rules adopted under this section. Any violation of this section or rules adopted under this section may be punished by the Board by a suspension or revocation of the permit to transport or remove dead human bodies or by a term of probation. The Board may, in lieu of any disciplinary measure, accept a penalty not to exceed five thousand dollars ($5,000) per violation.

(11) Each applicant for a permit shall provide the Board with the applicant's home address, name and address of any corporation or business entity employing such individual for the removal or transportation of dead human bodies, and the make, year, model, and license plate number of any vehicle in which a dead human body is transported. A permittee shall provide written notification to the Board of any change in the information required to be provided to the Board by this section or by the application for a permit within 30 days after such change takes place.

(12) If any person shall engage in or hold himself out as engaging in the business of transportation or removal of a dead human body without first having received a permit under this section, the person shall be guilty of a Class 2 misdemeanor.

(13) The Board shall have the authority to inspect any place or premises that the business of removing or transporting a dead human body is carried out and shall also have the right of inspection of any vehicle and equipment used by a permittee for the removal or transportation of a dead human body.

(d) Establishment Permit. –

(1) No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for that establishment has been issued by the Board and is conspicuously displayed in the establishment. Each funeral establishment at a specific location shall be deemed to be a separate entity and shall require a separate permit and compliance with the requirements of this Article.

(2) A permit shall be issued when:

a. It is shown that the funeral establishment has in charge a person, known as a manager, licensed for the practice of funeral directing or funeral service, who shall not be permitted to manage more than one funeral establishment.

b. The Board receives a list of the names of all part-time and full-time licensees employed by the establishment.

c. It is shown that the funeral establishment satisfies the requirements of G.S. 90-210.27A.

d. The Board receives payment of the permit fee.

(3) Applications for funeral establishment permits shall be made on forms provided by the Board and filed with the Board by the owner, a partner, a member of the limited liability company, or an officer of the corporation by January 1 of each year, and shall be accompanied by the application fee or renewal fee, as the case may be. All permits shall expire on December 31 of each year. If the renewal application and renewal fee are not received in the Board's office on or before February 1, a late renewal fee, ~~A penalty for late renewal,~~ in addition to the regular renewal fee, shall be ~~charged for renewal of registration received after the first day of February.~~charged.

(4) The Board may suspend or revoke a permit when an owner, partner, manager, member, operator, or officer of the funeral establishment violates any provision of this Article or any regulations of the Board, or when any agent or employee of the funeral establishment, with the consent of any person, firm or corporation operating the funeral establishment, violates any of those provisions, rules or regulations.

(5) Funeral establishment permits are not transferable. A new application for a permit shall be made to the Board within 30 days of a change of ownership of a funeral establishment.

(d1) Embalming Outside Establishment. – An embalmer who engages in embalming in a facility other than a funeral establishment or in the residence of the deceased person shall, no later than January 1 of each year, register the facility with the Board on forms provided by the Board.

(e) Revocation; Suspension; Compromise; Disclosure. –

(1) Whenever the Board finds that an applicant for a license or a person to whom a license has been issued by the Board is guilty of any of the following acts or omissions and the Board also finds that the person has thereby become unfit to practice, the Board may suspend or revoke

the license or refuse to issue or renew the license, in accordance with the procedures set out in Chapter ~~150B:~~150B of the General Statutes:

a. Conviction of a felony or a crime involving fraud or moral turpitude.

b. Fraud or misrepresentation in obtaining or renewing a license or in the practice of funeral service.

c. False or misleading advertising as the holder of a license.

d. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this paragraph shall not be construed to prohibit general advertising by the licensee.

e. Employment directly or indirectly of any resident trainee agent, assistant or other person, on a part-time or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular licensee.

f. The ~~direct or indirect giving of certificates of credit or the~~ payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing ~~business.~~business except as authorized by Article 13D of this Chapter.

g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral service.

h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material published or caused to be published by the licensee.

i. Failing to treat a dead human body with respect at all times. ~~Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of.~~

j. Violating or cooperating with others to violate any of the provisions of this Article, the rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies.

l. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to the custody thereof.

m. Knowingly making any false statement on a certificate of death.

n. Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is entitled to suspend, revoke or refuse to renew a license, the Board may accept from the licensee an offer to pay a penalty of not more than five thousand dollars ($5,000). The Board may either accept a penalty or revoke or refuse to renew a license, but not both.

(2) Where the Board finds that a licensee is guilty of one or more of the acts or omissions listed in subdivision (e)(1) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter ~~150B.~~150B of the General Statutes. In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars ($5,000) in conjunction with the probation.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he or she has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral service establishment shall accept a dead human body from any public officer (excluding the State or county medical examiner or his agent), or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the persons who have the legal authority to direct the disposition of the decedent's body. If any persons are found, their authority and directions shall govern the disposal of the remains of the decedent. Any funeral service establishment receiving the remains in violation of this subsection shall make no charge for any service in connection with the remains prior to delivery of the remains as stipulated by the persons having legal authority to direct the disposition of the body. This section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the persons having legal authority to direct the disposition of the body have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting forth the price of the service using said merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee

shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time. The statement shall have printed, typed or stamped on the face thereof: "This statement of disclosure is provided under the requirements of North Carolina G.S. 90-210.25(e)."

(f) Unlawful Practices. – If any person shall practice or hold himself out as practicing the profession or art of embalming, funeral directing or practice of funeral service without having complied with the licensing provisions of this Article, he shall be guilty of a Class 2 misdemeanor.

(g) Whenever it shall appear to the Board that any person, firm or corporation has violated, threatens to violate or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue an order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides."

SECTION 8.(a) Chapter 65 of the General Statutes is amended by adding the following new Article to read:

"Article 11.

"Minimum Burial Depth."

SECTION 8.(b) G.S. 90-210.25A is recodified as G.S. 65-77 in Article 11 of Chapter 65 of the General Statutes, as enacted by Section 8(a) of this act.

SECTION 9.(a) G.S. 90-210.27A(g) reads as rewritten:

"(g) No funeral establishment or other licensee under this Article shall own, operate, or maintain a funeral chapel without first having registered the name, location, and ownership thereof with the ~~Board.~~Board; own or maintain more than two funeral chapels, or own or maintain a funeral chapel outside of a radius of 50 miles from the funeral establishment. A duly licensed person may use a funeral chapel for making arrangements for funeral service, selling funeral supplies to the public, or making financial arrangements for the rendering of such service or sale of supplies, provided that such uses are secondary and incidental to and do not interfere with the reposing of dead human bodies, visitation, or funeral ceremony."

SECTION 9.(b) G.S. 90-210.27A is amended by adding the following new subsections to read:

"(i) No funeral establishment shall use an unregistered or misleading name. Misleading names include, but are not limited to, names in the plural form when there is only one funeral establishment and the use of the word "crematory" or "crematorium" in

the name of a funeral establishment that does not own a crematory. If an owner of a funeral establishment owns more than one funeral establishment, the owner may not use the word "crematory" or "crematorium" in the name of more than one of its funeral establishments; except that each funeral home having a crematory on the premises may contain the term "crematory" or "crematorium" in its name.

(j) A funeral establishment will not use any name other than the name by which it is properly registered with the Board."

SECTION 10. G.S. 90-210.29A reads as rewritten:

"**§ 90-210.29A. Identification of bodies before burial or cremation.**

The funeral director or person otherwise responsible for the final disposition of a dead body shall, prior to the interment or entombment of the dead body, affix on the ankle or wrist of the dead body, or, if cremated, on the inside of the ~~vessel~~ temporary container or urn containing the remains of the dead body, a tag of durable, noncorroding material permanently marked with the name of the deceased, the date of death, the social security number of the deceased, the county and state of death, and the site of interment or entombment."

SECTION 11. G.S. 90-210.63(a)(2) reads as rewritten:

"**§ 90-210.63. Substitution of licensee.**

(a) If the preneed funeral contract is irrevocable, the preneed funeral contract purchaser, or after his death the preneed funeral contract beneficiary or his legal representative, upon written notice to the financial institution or insurance company and the preneed licensee who is a party to the preneed funeral contract, may direct the substitution of a different funeral establishment to furnish funeral services and merchandise.

...

(2) The original contracting preneed licensee shall immediately pay all funds received to the successor funeral establishment designated. Regardless of whether the substitution is made before or after the death of the preneed funeral contract beneficiary, the original contracting preneed licensee shall not be required to give credit for the amount retained pursuant to G.S. 90-210.61(a)(2), except when there was a substitution under G.S. 90-210.68(d1) and (e). ~~Except when there was a substitution under G.S. 90-210.68(d1) and (e), if the original contracting preneed licensee did not retain any portion of payments made as is permitted by G.S. 90-210.61(a)(2) then the preneed licensee may retain up to ten percent (10%) of the funds received from the financial institution.~~ Upon making payments pursuant to this subsection, the financial institution and the original contracting preneed licensee shall be relieved from all further contractual liability thereon.

...."

SECTION 12. G.S. 90-210.64(a) reads as rewritten:

"(a) After the death of a preneed funeral contract beneficiary and full performance of the preneed funeral contract by the preneed licensee, the preneed licensee shall

promptly complete a certificate of performance ~~or similar claim form~~ and present it to the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the certificate of performance or similar claim form, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. Within 10 days after receiving payment, the preneed licensee shall mail a copy of the certificate of performance or other claim form to the Board."

SECTION 13. G.S. 90-210.65(e) reads as rewritten:

"(e) This section shall not apply to irrevocable preneed funeral contracts. Irrevocable preneed funeral contracts may not be revoked nor any proceeds refunded except by order of a court of competent jurisdiction. Notwithstanding the previous sentence, irrevocable preneed funeral contracts purchased pursuant to G.S. 90-210.61(a)(3) shall also be revocable when the underlying insurance policy lapses or is otherwise cancelled and the lapsed or cancelled policy no longer provides any funding for the preneed funeral contract."

SECTION 14. G.S. 90-210.67(e) and (f) are repealed.

SECTION 15. G.S. 90-210.70 is amended by adding the following new subsection to read:

"(e) Whenever it shall appear to the Board that any person, firm, or corporation has violated, threatens to violate, or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue an order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides."

SECTION 16. G.S. 143B-472.5, as recodified by Section 17 of this act, reads as rewritten:

"**§ 90-210.83. Assessments against ~~association for expenses of Board of Mortuary Science.~~associations.**

~~In order to meet the expenses of the supervision of the burial associations, the Board of Mortuary Science shall prepare an annual budget for the office of the Board of Mortuary Science. Thereafter, the Board of Mortuary Science shall~~ The North Carolina Board of Funeral Service shall annually assess each burial association one hundred dollars ($100.00) plus an amount not to exceed fifty cents (50¢) per member. ~~and shall prorate the remaining amount of this budget, over and above any other funds made available to it for this purpose, and assess each association on a pro rata basis in accordance with the number of members of each association.~~ Each burial association shall remit to the Board of ~~Mortuary Science~~ Funeral Service its ~~pro rata part of the total~~ assessment, which expense shall be included in the thirty per centum (30%) expense allowance as provided in G.S. ~~143B-472.3.~~ 90-210.81. This assessment shall be made

on the first day of July of each and every year and said assessment shall be paid within 30 days thereafter. If any association shall fail or refuse to pay such assessment within 30 days, the Board of ~~Mortuary Science~~ Funeral Service is authorized to transfer all memberships and assets of every kind and description to the nearest association that is found by the Board of ~~Mortuary Science~~ Funeral Service to be in good sound financial condition."

SECTION 17.(a) Chapter 90 of the General Statutes is amended by adding the following new Article to read:

"Article 13E.

"Mutual Burial Associations."

SECTION 17.(b) G.S. 143B-472.2 through G.S. 143B-472.29 are recodified as G.S. 90-210.80 through G.S. 90-210.107 in Article 13E of Chapter 90 of the General Statutes, as enacted by Section 17(a) of this act. The Revisor of Statutes is authorized to make changes to statutory cross-references that will reflect the results of the recodification.

SECTION 18. This act becomes effective October 1, 2003.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 5, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Henderson	North Carolina Bd of Mortuary Science 3321 Crabtree Blvd. Raleigh, NC.
HARVEY LEAVITT	LEAVITT FUNERAL HOME WADESBORO NC
Jody Tyson	Taylor-Edwards Funeral Home Snow Hill, NC
STEVE BRYAN	Focus Group for The Funeral Bryan Funeral Service Swan Quarter NC 27885
Joyce Peters	[illegible]
Yu Anne Bamkert	NCAHP
PAUL MALONEY	NCAHP
Steve Woodson	NC Farm Bureau
Kevin Leonard	NCSR
[illegible]	NCAHP
[illegible]	NCAHP

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 5, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe Sohrad	Dogwood Legal
BILL HALE	JORDAN PRICE
Colin Christian	Coalition for Responsible Lending
Richard C. Hatch	AARP
Keith Corbett	CRL
Bill Rustin	ACP
Henry Lancaster	FDMANC
David Sollee	Self Help
Carol Schiede	NC Medical Society
Amy Jo Horne	NCMS
Barbara Carsler	MFS

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 5, 2003

Name of Committee — **Date**

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John Bordisch	AstraZeneca
Brian Shank	AstraZeneca
Lucius Pullen	Attorney
Rusty Lynn	NCCA
John McMillan	MFDS
Susan Valauri	Nationwide
Helen Savage	AARP
Mary H. Odom	AARP
McKenley Brown, Jr.	NC DOA
Hubert Tilson	NCCUA
VL McBride	NCOA
Mark Barnes	IABA (Barnes Collision Repair)

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 5, 2003

Name of Committee — **Date**

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Jon Carr	Jordan Price Law Firm
Abby Youngkin	Intern
Charlie Chrisawn	Poyner + Spruill
[illegible]	NMA
[illegible] Jayne	Labor
Art Braff	NCDOL
Barbara Jackson	NCDOL
Al Rigby	NC Justice Ctr
[illegible]	NCAHP + Staff
Barbara Morales Burke	NCDOI
Frank Folger	NCDOI

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 5, 2003

Name of Committee — **Date**

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NAME	FIRM OR AGENCY AND ADDRESS
Colleen Kochanek	Haber & Caldwell, P.A.
Mike Carr	ASA + NRA
Mike Munn	NCCA
J Rumfelt	NCNP
Fran Cochran	NC State Ltd
Mac Mumbett	Poyner & Spruill
Felicia Schneider	NCAPI - Greensboro, NC
Ruth Reynolds	President - NCAPI Charlotte NC
Bill Fletcher	NCAPI Vice Pres. Legislative-Legal Affairs Wilkesboro, NC
Leanne Bright Cloudman	Pender / New Hanover P.I.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 5, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
MW SAFRIT	KIKER Investigations 133 E Council St Salisbury NC 28144
Jeff Kiker	Kiker Investigations 133 E. council St Salisbury NC 28144
Jane Moore	NC Petroleum Council, Raleigh NC
Jeffrey Covington	Blake Investigations Raleigh NC
Christine Covington	Blake Investigations, Inc Raleigh NC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 994

Committee Substitute Favorable 4/23/03

Senate Commerce Committee Substitute Adopted 6/4/03

Short Title: Public Works Exemption. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT ALLOWING THE STATE, COUNTIES, AND CITIES TO CONSTRUCT PREENGINEERED STRUCTURES WITHOUT HAVING THE PLANS AND SPECIFICATIONS FOR THE STRUCTURES REVIEWED BY A REGISTERED ARCHITECT OR ENGINEER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 133-1.1(c) reads as rewritten:

"(c) The following shall be excepted from the requirements of subsection (a) of this section:

(1) Dwellings and outbuildings in connection therewith, such as barns and private garages.

(2) Apartment buildings used exclusively as the residence of not more than two families.

(3) Buildings used for agricultural purposes other than schools or assembly halls which are not within the limits of a city or an incorporated village.

(4) Temporary buildings or sheds used exclusively for construction purposes, not exceeding 20 feet in any direction, and not used for living quarters.

(5) Preengineered garages, sheds, and workshops used exclusively by city, county, public school, or State employees for purposes related to their employment."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 994

Committee Substitute Favorable 4/23/03
Senate Commerce Committee Substitute Adopted 6/4/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H994-CSSU-30 [v.1]

6/12/2003 2:26:00 PM

Short Title: Public Works Exemption. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT ALLOWING THE STATE, COUNTIES, AND CITIES TO CONSTRUCT PREENGINEERED STRUCTURES WITHOUT HAVING THE PLANS AND SPECIFICATIONS FOR THE STRUCTURES REVIEWED BY A REGISTERED ARCHITECT OR ENGINEER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 133-1.1(c) reads as rewritten:

"(c) The following shall be excepted from the requirements of subsection (a) of this section:

(1) Dwellings and outbuildings in connection therewith, such as barns and private garages.

(2) Apartment buildings used exclusively as the residence of not more than two families.

(3) Buildings used for agricultural purposes other than schools or assembly halls which are not within the limits of a city or an incorporated village.

(4) Temporary buildings or sheds used exclusively for construction purposes, not exceeding 20 feet in any direction, and not used for living quarters.

(5) Pre-engineered garages, sheds, and workshops up to 5,000 square feet used exclusively by city, county, public school, or State employees for purposes related to their employment. For pre-engineered garages, sheds, and workshops constructed pursuant to this subdivision, there shall be a minimum separation of these structures from other buildings or property lines of 30 feet."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 994:
Public Works Exemption

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Representative K. Williams
Date:	June 17, 2003	**Summary by:**	Wendy Graf Ray
Version:	Proposed Committee Substitute H994-CSSU-30[v.1]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 994 would exempt certain structures from the requirement that plans and specifications be reviewed by a registered architect or engineer.***

CURRENT LAW: When an officer, board, department, or commission enters into a construction contract involving the expenditure of public funds, G.S. 133-1.1 requires that plans and specifications be prepared by a registered architect, registered engineer, or both (depending on the type of work involved) in the following situations:

- Expenditure of funds exceeds $300,000 for repairs that do not include major structural change in framing or foundation support systems.
- Expenditure of funds exceeds $100,000 for repairs that affect life safety systems.
- Expenditure of funds exceeds $135,000 for repairs that do include major structural change in framing or foundation support systems.
- Expenditure of funds exceeds $135,000 for construction of, or additions to, public buildings or State-owned and operated utilities.

The architect and/or engineer is required to make inspections of the project and issue a certificate of compliance once he or she is satisfied that the contractor has fulfilled the obligations of the plans, specifications, and contract.

G.S. 133-1.1(c) specifically exempts the following structures from the requirement that plans and specifications be prepared by an architect or engineer:

- Dwellings and outbuildings such as barns and private garages.
- Apartment buildings used as the residence of not more than two families.
- Buildings, other than schools or assembly halls, that are used for agricultural purposes and are outside the limits of a city or incorporated village.
- Temporary buildings used exclusively for construction purposes that do not exceed 20 feet in any direction.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 994 would add to the list of exemptions set out in G.S. 133-1.1(c) any pre-engineered garage, shed, or workshop that is used exclusively by city, county, public school, or State employees for purposes related to their employment. These structures would be required to be no more than 5,000 square feet in size and located at least 30 feet from other buildings or property lines.

EFFECTIVE DATE: The bill would be effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 994

Committee Substitute Favorable 4/23/03

Senate Commerce Committee Substitute Adopted 6/4/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H994-PCS50291-SU-30

Short Title: Public Works Exemption. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT ALLOWING THE STATE, COUNTIES, AND CITIES TO CONSTRUCT PRE-ENGINEERED STRUCTURES WITHOUT HAVING THE PLANS AND SPECIFICATIONS FOR THE STRUCTURES REVIEWED BY A REGISTERED ARCHITECT OR ENGINEER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 133-1.1(c) reads as rewritten:

"(c) The following shall be excepted from the requirements of subsection (a) of this section:

(1) Dwellings and outbuildings in connection therewith, such as barns and private garages.

(2) Apartment buildings used exclusively as the residence of not more than two families.

(3) Buildings used for agricultural purposes other than schools or assembly halls which are not within the limits of a city or an incorporated village.

(4) Temporary buildings or sheds used exclusively for construction purposes, not exceeding 20 feet in any direction, and not used for living quarters.

(5) Pre-engineered garages, sheds, and workshops up to 5,000 square feet used exclusively by city, county, public school, or State employees for purposes related to their employment. For pre-engineered garages, sheds, and workshops constructed pursuant to this subdivision, there shall be a minimum separation of these structures from other buildings or property lines of 30 feet."

SECTION 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 339

Committee Substitute Favorable 4/24/03

Committee Substitute #2 Favorable 4/30/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H339-PCS30362-RG-22

Short Title: Life and Health Insurance Omnibus.-AB (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO CONFORM NORTH CAROLINA'S THIRD PARTY ADMINISTRATOR ARTICLE TO REVISIONS TO THE NAIC MODEL THIRD PARTY ADMINISTRATOR STATUTE; REQUIRE GROUP ANNUITY INSURERS TO ISSUE INDIVIDUAL CERTIFICATES OF COVERAGE TO EACH ANNUITANT; REORGANIZE ARTICLE 60 OF CHAPTER 58 OF THE GENERAL STATUTES AND AMEND CURRENT DISCLOSURE REQUIREMENTS FOR SOLICITATION OF LIFE INSURANCE PRODUCTS AND ANNUITIES; REQUIRE INSURERS TO NOTIFY EMPLOYEES OF THE EXISTENCE OF EMPLOYER-OWNED LIFE INSURANCE POLICIES WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF COVERAGE; REQUIRE THAT ASSOCIATION PREMIUM RATES FOR ACCIDENT AND HEALTH INSURANCE BE ACTUARIALLY SOUND AND THAT ASSOCIATIONS BE RATED AS A SINGLE GROUP WHEN THE COVERAGE PROVIDED IS NOT EMPLOYER-BASED; LIMIT AN INDIVIDUAL ACCIDENT AND HEALTH INSURER'S USE OF AN INDIVIDUAL'S OWN CLAIMS' EXPERIENCE TO DEVELOP THE INDIVIDUAL'S RENEWAL RATE; EXEMPT A SOLE PROPRIETOR FROM THE FULL-TIME BASIS OR THIRTY-HOUR WORKWEEK REQUIREMENTS TO BE ELIGIBLE FOR LARGE GROUP HEALTH COVERAGE LIKE THE PROPRIETOR'S FULL-TIME EMPLOYEES; CORRECT AN INADVERTENT CROSS-REFERENCE IN ORDER TO REAPPLY NEWBORN COVERAGE TO A MORE COMPREHENSIVE GROUP OF INSURERS; TECHNICALLY CORRECT AN OMISSION REGARDING PROVISIONS GOVERNING PREEXISTING CONDITIONS FOR LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES; DECREASE THE TOTAL NUMBER OF MEMBERS THAT SERVE ON THE

SMALL EMPLOYER REINSURANCE POOL BOARD FROM NINE TO SIX; ALLOW PERSONS RETROACTIVELY ENROLLED IN MEDICARE PART B THE SAME SIX-MONTH OPEN ENROLLMENT PERIOD FOR MEDICARE SUPPLEMENT PLANS AS PERSONS WHO ENROLLED IN MEDICARE PART B WITHOUT A RETROACTIVE EFFECTIVE DATE OF COVERAGE; TECHNICALLY CORRECT THE REVOCATION AND SUSPENSION LAW TO INCLUDE A BENEFICIARY OF A LIFE OR ANNUITY CONTRACT AS A CLAIMANT; MANDATE HEALTH BENEFIT COVERAGE FOR DESIGNATED TRAVEL EXPENSES WHEN THE REQUIRED DISTANCE TRAVELED THRESHOLD IS MET; TO REQUIRE RATE METHODOLOGY UNDER MEDICARE SUPPLEMENTAL INSURANCE POLICIES TO BE BASED ON ISSUE AGE AND TO MAKE OTHER CHANGES TO THE LAW PERTAINING TO MEDICARE SUPPLEMENTAL INSURANCE POLICIES; AND MAKE TECHNICAL CORRECTIONS TO THE CREDIT INSURANCE LAWS.

The General Assembly of North Carolina enacts:

PART I. THIRD PARTY ADMINISTRATOR ACT REWRITE

SECTION 1. G.S. 58-56-2 is repealed.

SECTION 1.1. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-3. Definitions.**

As used in this Article:

(1) "Administrator", "third party administrator", and "TPA" mean a person who directly or indirectly underwrites, collects, or charges premiums from, or adjusts or settles claims on, residents of this State in connection with life, annuity, or health coverage offered or provided by an insurer, except any of the following:

a. An employer, or a wholly owned direct or indirect subsidiary of an employer, on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer.

b. A union on behalf of its members.

c. An insurer that is authorized to transact insurance in this State pursuant to Articles 1 through 67 of this Chapter.

d. An insurance producer licensed to sell life, annuity, or health coverage in this State, whose activities are limited exclusively to the sale of insurance.

e. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.

f. A trust and its trustees, agents, and employees acting pursuant to a trust established in conformity with 29 U.S.C. § 186.

g. A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees and employees acting pursuant to the trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account which

meets the requirements of section 401(f) of the Internal Revenue Code.

h. A credit union or a financial institution that is subject to supervision or examination by federal or State banking authorities, or a mortgage lender, to the extent it collects and remits premiums to licensed insurance producers or to limited lines producers or authorized insurers in connection with loan payments.

i. A credit card issuing company that advances for and collects insurance premiums or charges from its credit card holders who have authorized collection.

j. A person who adjusts or settles claims in the normal course of that person's practice or employment as a licensed attorney and who does not collect charges or premiums in connection with life, annuity, or health coverage.

k. An adjuster licensed by this State whose activities are limited to adjustment of claims.

l. A person licensed as a managing general agent in this State, whose activities are limited exclusively to the scope of activities conveyed under the license.

m. An administrator who is affiliated with an insurer and who only performs the contractual duties (between the administrator and the insurer) of an administrator for the direct and assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator's books and records to the Commissioner, upon a request from the Commissioner.

(2) "Affiliate or affiliated" means an entity or person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Commissioner" means the Commissioner of Insurance of this State.

(4) "Control" means the term as defined in G.S. 58-19-5(2).

(5) "GAAP" means United States generally accepted accounting principles consistently applied.

(6) "Home state" means the District of Columbia and any state or territory of the United States in which an administrator is incorporated or maintains its principal place of business. If neither the state in which the administrator is incorporated nor the state in which it maintains its principal place of business has adopted the NAIC Third Party Administrator Statute, or a substantially similar law governing administrators, the administrator may declare another state in which it conducts business to be its "home state".

(7) "Insurance producer" means a person who sells, solicits, or negotiates a contract of insurance as those terms are defined in this Article.

(8) "Insurer" means an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, and a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(9) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(10) "Nonresident administrator" means a person who is applying for licensure or is licensed in any state other than the administrator's home state.

(11) "Person" means an individual or a business entity.

(12) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(13) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(14) "Underwrites" or "underwriting" includes the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer or self-funded plan and also includes the overall planning and coordinating of a benefits program.

(15) "Uniform Application" means the current version of the NAIC Uniform Application for Third Party Administrators."

SECTION 1.2. G.S. 58-56-6 reads as rewritten:

"**§ 58-56-6. Written agreement necessary.**

(a) No TPA may act as a TPA without a written agreement between the TPA and the insurer. The written agreement shall be retained as part of the official records of both the insurer and the TPA for the duration of the agreement and for five years thereafter. The agreement shall contain all provisions required by this Article, ~~to the extent those requirements apply to the functions performed by the TPA.~~ except insofar as those requirements do not apply to the functions performed by the TPA.

(b) The agreement shall include a statement of duties that the TPA is expected to perform on behalf of the insurer and the ~~kinds of insurance the TPA is to be authorized to administer.~~lines, classes, or types of insurance for which the TPA is to be authorized to administer. The agreement shall provide for underwriting or other standards pertaining to the business underwritten by the insurer.

(c) The insurer or TPA may, with written notice, terminate the written agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the TPA during the pendency of any dispute regarding the cause for termination of the agreement. The insurer ~~must~~ shall fulfill any lawful obligations with

respect to policies affected by the agreement, regardless of any dispute between the insurer and the TPA."

SECTION 1.3. G.S. 58-56-16 reads as rewritten:

"**§ 58-56-16. Records to be kept.**

(a) Every TPA shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance record keeping and must be maintained for a period of at least five years after the date of their creation.

~~(b) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. The Commissioner shall keep confidential any trade secrets contained in those books and records, including the identity and addresses of policyholders and certificate holders, except that the Commissioner may use the information in any judicial or administrative proceeding instituted against the TPA.~~

(c) The insurer shall own the records generated by the TPA pertaining to the insurer, but the TPA shall retain the right to continuing access to books and records to permit the TPA to fulfill all of its contractual obligations to insured parties, claimants, and the insurer.

(d) In the event the insurer and the TPA cancel their agreement, notwithstanding the provisions of subsection (a) of this section, the TPA may, by written agreement with the insurer, transfer all records to a new TPA rather than retain them for five years. In this case, the new TPA shall acknowledge, in writing, that it is responsible for retaining the records of the prior TPA as required in subsection (a) of this section.

(e) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. Any documents, materials, or other information in the possession or control of the Commissioner that are furnished by a TPA, insurer, insurance producer, or an employee or agent thereof acting on behalf of the TPA, insurer, or insurance producer, or obtained by the Commissioner in an investigation shall be confidential by law and privileged, shall not constitute a public record as defined by G.S. 132-1, shall not be subject to subpoena, shall not be subject to discovery, and shall not be admissible in evidence in any private civil action. However, the Commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.

(f) Neither the Commissioner nor any person who receives documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (e) of this section.

(g) In order to assist in the performance of the Commissioner's duties, the Commissioner:

(1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (e) of this section, with other State, federal, and

international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, and with State, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(2) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(3) May enter into agreements governing sharing and use of information consistent with this subsection.

(h) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (g) of this section.

(i) Nothing in this Article shall prohibit the Commissioner from releasing final, adjudicated actions including for-cause terminations that are open to public inspection pursuant to Chapter 132 of the General Statutes or to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or its subsidiaries."

SECTION 1.4. G.S. 58-56-51 is repealed.

SECTION 1.5. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-52. Home state certificate of authority or license.**

(a) A person shall apply to be a TPA in its home state upon the Uniform Application and shall receive a certificate of authority or license from the Commissioner of its home state prior to performing any function of a TPA in this State. Each application shall be accompanied by a nonrefundable filing fee of one hundred dollars ($100.00).

(b) The Uniform Application shall include or be accompanied by the following information and documents:

(1) All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, and other applicable documents and all amendments to those documents.

(2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the applicant.

(3) NAIC Biographical Affidavit for the individuals who are responsible for the conduct of affairs of the applicant, including all members of the

board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company; any shareholders or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the applicant; and any other person who exercises control or influence over the affairs of the applicant.

(4) Audited annual financial statements or reports for the two most recent fiscal years that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two fiscal years, the Uniform Application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years and for any month during the current fiscal year for which the financial statements or reports have been completed. The applicant shall also include any other information the Commissioner requires in order to review the current financial condition of the applicant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include all of the following:

a. Amounts shown on the consolidated audited financial report shall be shown on the worksheet.

b. Amounts for each entity shall be stated separately.

c. Explanations of consolidating and eliminating entries.

(5) A statement describing the business plan including information on staffing levels and activities proposed in this State and nationwide. The plan shall provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping, and underwriting.

(6) Any other pertinent information required by the Commissioner.

(c) A TPA licensed or applying for licensure under this section shall make available for inspection by the Commissioner copies of all contracts with insurers or other persons utilizing the services of the TPA.

(d) A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

(e) The Commissioner may refuse to issue a certificate of authority or license if the Commissioner determines that the TPA, or any individual responsible for the conduct of affairs of the TPA, is not competent, trustworthy, financially responsible, or of good personal and business reputation, has had an insurance or an administrator certificate of authority or license denied or revoked for cause by any jurisdiction, or if

the Commissioner determines that any of the grounds set forth in G.S. 58-56-72 exists with respect to the TPA.

(f) A certificate of authority or license issued under this section shall remain valid, unless surrendered, suspended, or revoked by the Commissioner, for so long as the TPA continues in business in this State and remains in compliance with this Article.

(g) A TPA licensed or applying for licensure under this section shall immediately notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a certificate of authority or license in this State. The Commissioner shall report any such changes to the producer database maintained by the NAIC or affiliates or subsidiaries of the NAIC."

SECTION 1.6. G.S. 58-56-56 is repealed.

SECTION 1.7. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-57. Registration requirement.**

A person who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this State in connection with life, annuity, or health coverage provided by a self-funded plan shall register with the Commissioner annually, verifying its status as herein described in a format prescribed by the Commissioner."

SECTION 1.8. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-62. Annual report and filing.**

(a) Each TPA licensed under G.S. 58-56-52 shall file an annual report for the preceding calendar year with the Commissioner on or before July 1 of each year or within such extension of time as the Commissioner for good cause may grant. The annual report shall include an audited financial statement performed by an independent certified public accountant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the information required under G.S. 58-56-52(b)(4)a. through c. The report shall be in the form and contain such matters as the Commissioner prescribes and shall be verified by at least two officers of the TPA.

(b) The annual report shall include the complete names and addresses of all insurers with which the administrator had agreements during the preceding fiscal year.

(c) At the time of filing its annual report, the administrator shall pay a nonrefundable filing fee of one hundred dollars ($100.00).

(d) The Commissioner shall review the most recently filed annual report of each administrator on or before September 1 of each year. Upon completion of its review, the Commissioner shall either:

(1) Issue a certification to the administrator that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is currently licensed and in good standing, or noting any deficiencies found in the annual report and financial statements; or

(2) Update any electronic database maintained by the National Association of Insurance Commissioners, or its affiliates or subsidiaries, indicating that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is in compliance with existing law, or noting any deficiencies found in the annual report."

SECTION 1.9. G.S. 58-56-66 is repealed.

SECTION 1.10. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-67. Nonresident administrator certificate of authority.**

(a) Unless a TPA has obtained a home state certificate of authority or license in this State under G.S. 58-56-52, any TPA who performs administrator duties in this State shall obtain a nonresident administrator certificate of authority or license in accordance with this section by filing with the Commissioner the Uniform Application accompanied by a letter of certification from the home state of the TPA. In lieu of requiring a TPA to file a letter of certification with the Uniform Application, the Commissioner may verify the nonresident administrator's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries.

(b) A TPA shall not be eligible for a nonresident administrator certificate of authority or license under this section if it does not hold a certificate of authority as a resident in a home state that has adopted the NAIC Third Party Administrator Statute or a substantially similar law governing TPAs.

(c) Except as provided in subsections (b) and (h) of this section, the Commissioner shall issue to the TPA a nonresident administrator certificate of authority or license promptly upon receipt of a complete application.

(d) Unless notified by the Commissioner that the Commissioner is able to verify the nonresident TPA's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners, or its affiliates or subsidiaries, each nonresident TPA annually shall file a statement that its home state administrator certificate of authority or license remains in force and has not been revoked or suspended by its home state during the preceding year. The statement required by this subsection shall be filed by November 1 each year.

(e) At the time of filing the statement required under subsection (d) of this section or if the Commissioner has notified the nonresident administrator that the Commissioner is able to verify the nonresident administrator's home state certificate of authority or license status through an electronic database, the nonresident TPA shall pay, no later than November 1, a nonrefundable filing fee of one hundred dollars ($100.00).

(f) A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

(g) A nonresident TPA is not required to hold a nonresident administrator certificate of authority or license in this State if the TPA's duties in this State are limited to the administration of a group policy or plan of insurance and no more than a total of 100 persons insured for all plans reside in this State.

(h) The Commissioner may refuse to issue a nonresident administrator certificate of authority or license, or delay the issuance of a nonresident administrator certificate of authority or license, if the Commissioner determines that, due to events or information obtained subsequent to the home state's licensure of the TPA, the nonresident TPA cannot satisfy the requirements of this Article or that grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license. If the Commissioner refuses to issue a certificate of authority of license pursuant to this section, the Commissioner shall give written notice of its determination to the Commissioner of the home state, and the Commissioner may delay the issuance of a nonresident administrator certificate of authority to the nonresident TPA until the Commissioner determines that the administrator can satisfy the requirements of this Article and that no grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license."

SECTION 1.11. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-72. Grounds for denial, suspension, or revocation of certificate of authority.**

(a) The certificate of authority or license of a TPA shall be denied, suspended, or revoked if the Commissioner finds that the TPA:

(1) Is in an unsound financial condition;

(2) Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this State hazardous or injurious to insured persons or the public; or

(3) Has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final.

(b) The Commissioner may, after notice and opportunity for hearing, deny, suspend, or revoke the certificate of authority or license of a TPA if the Commissioner finds that the TPA:

(1) Has violated any lawful rule or order of the Commissioner or any provision of the insurance laws of this State;

(2) Has refused to be examined or to produce its accounts, records, and files for examination, or if any individual responsible for the conduct of affairs of the TPA has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination when required by the Commissioner, including:

a. Members of the board of directors, board of trustees, executive committee, or other governing board or committee;

b. The principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company;

c. Any shareholder or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the TPA; and

d. Any other person who exercises control or influence over the affairs of the TPA;

(3) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the TPA to secure full payment or settlement of such claims;

(4) Fails, at any time, to meet any qualification for which issuance of the certificate could have been refused had the failure then existed and been known to the Commissioner;

(5) Or any of the individuals responsible for the conduct of its affairs has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether adjudication was withheld, including:

a. Members of the board of directors, board of trustees, executive committee or other governing board or committee;

b. The principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company;

c. Any shareholder or member holding directly or indirectly ten percent or more of its voting stock, voting securities, or voting interest; and

d. Any other person who exercises control or influence over its affairs;

(6) Is under suspension or revocation in another state; or

(7) Has failed to timely file its annual report pursuant to G.S. 58-56-62 if a resident administrator or its statement and filing fee, as applicable, pursuant to G.S. 58-56-67(d) and (e) if a nonresident administrator.

(c) The Commissioner may, without advance notice or hearing, immediately suspend the certificate of authority or license of a TPA if the Commissioner finds that one or more of the following circumstances exist:

(1) The TPA is insolvent or impaired.

(2) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the TPA has been commenced in any state.

(3) The financial condition or business practices of the TPA otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this State.

(d) If the Commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of authority issued under this part, the Commissioner may, in lieu of suspension or revocation, impose a fine upon the TPA."

SECTION 1.12. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-73. Prohibited practices.**

No person shall act as, offer to act as, or hold himself or herself out as a TPA in this State without a valid domestic or nonresident administrator certificate of authority issued by the Commissioner."

PART II. GROUP ANNUITY CONTRACTS

SECTION 2. G.S. 58-58-145 reads as rewritten:

"**§ 58-58-145. Group annuity contracts defined; ~~requirements.~~requirements; issuance of individual certificates.**

(a) Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable to more than one person, is a group annuity contract. The person, firm or corporation to whom or to which such contract is issued, as herein provided, is the holder of the contract. The term "annuitant" means any person to whom or which payments are made under the group annuity contract. No authorized insurer shall deliver or issue for delivery in this State any group annuity contract except upon a group of annuitants that conforms to the following: under a contract issued to an employer, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, the stipulated payments on which shall be paid by the holder of such contract either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the employees covered by such contract, and providing a plan of retirement annuities under a plan which permits all of the employees of such employer or of any specified class or classes thereof to become annuitants. Any such group of employees may include retired employees, and may include officers and managers as employees, and may include the employees of subsidiary or affiliated corporations of a corporation employer, and may include the individual proprietors, partners and employees of affiliated individuals and firms controlled by the holders through stock ownership, contract or otherwise.

(b) The insurer of a group annuity contract shall issue to the policyholder, within 30 days of the effective date of the group annuity contract, an individual certificate for delivery to each annuitant which:

(1) Identifies the annuity to which the annuitant is entitled.

(2) States the name of the person to whom the annuity is payable.

(3) Discloses all of the rights and obligations of the insurer, the policyholder, the annuitant, and the persons to whom the annuity is payable with respect to the group annuity contract.

G.S. 58-3-150 applies to the form of the individual certificate required by this subsection.

(c) Each group annuity contract shall include a provision that the insurer will issue to the policyholder within 30 days of the effective date of the contract, for delivery to each annuitant, an individual certificate setting forth the information described in subsection (b) of this section."

PART III. DISCLOSURES FOR ANNUITIES AND LIFE INSURANCE

SECTION 3. The title of Article 60 of Chapter 58 of the General Statutes reads as rewritten:

"Article 60.

~~Regulation of Life Insurance Solicitation.~~

Standards of Disclosure for Annuities and Life Insurance."

SECTION 3.1. Article 60 of Chapter 58 of the General Statues is amended by designating G.S. 58-60-1 through G.S. 58-60-35 as:

"Part 1. Regulation of Life Insurance Solicitation."

SECTION 3.2. G.S. 58-60-1 reads as rewritten:

"**§ 58-60-1. ~~Purpose of Article.~~Short title; purpose.**

(a) This Part may be cited as the "Life Insurance Disclosure Act".

(b) The purpose of this ~~Article~~ Part is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for ~~their~~ the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and to improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

This ~~Article~~ Part does not prohibit an insurer ~~to use~~ from using additional material ~~which~~ that is not in violation of Articles 1 through 64 of this Chapter nor any other statute or regulation."

SECTION 3.3. G.S. 58-60-5 reads as rewritten:

"**§ 58-60-5. ~~Scope of Article;~~ Scope; exemptions.**

(a) Except as otherwise provided in this ~~Article,~~ Part, this ~~Article~~ Part applies to any solicitation, negotiation or procurement of life insurance occurring within this State. This ~~Article~~ Part applies to any issuer of a life insurance contract, including fraternal benefit societies.

(b) Unless otherwise specifically included, this ~~Article~~ Part does not apply to:

(1) ~~Annuities,~~Individual group annuity contracts.

(2) Credit life ~~insurance,~~insurance.

(3) Group life ~~insurance,~~ insurance (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy).

(4) Life insurance policies issued in connection with pension and welfare plans as defined by and that are subject to the federal Employee Retirement Income Security Act of 1974 ~~(ERISA),~~(ERISA).

(5) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(c) The policy summary in this ~~Article~~ Part is not required for policies that are sold subject to rules adopted by the Commissioner for life insurance illustrations."

SECTION 3.4. G.S. 58-60-10(7)k. reads as rewritten:

"k. The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in subparagraph e of this paragraph shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space. If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor, it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in this State."

SECTION 3.5. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Home Service Life Insurance Solicitation.

"**§ 58-60-40. Title and reference.**

This Part may be cited as the "Home Service Disclosure Act".

"**§ 58-60-45. Purpose.**

The purpose of this Part is to establish standards that ensure that meaningful information is provided to the purchasers of insurance policies distributed through the home service distribution system.

"**§ 58-60-50. Definitions.**

As used in this Part:

(1) "Home service distribution system" means a system in which insurance products are marketed, sold, or serviced by agents in person in the home or business of the insured, owner, or premium payor in assigned territories and may be identified as "debits". The policies are issued on a monthly or more frequent premium payment basis and agents are charged with the responsibilities of servicing the debit, which may include the collection of premium payments in the home or designated location on a monthly or more frequent basis, along with other services normally rendered.

(2) "Small face amount life insurance policy" means an insurance policy or certificate with a face amount of fifteen thousand dollars ($15,000) or less.

"**§ 58-60-55. General disclosure requirements.**

(a) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80 and at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) Whether the policyholder is allowed to change the method of premium payment and any conditions for that change;

(2) Whether or not at a subsequent date a policyholder may combine multiple policies from the same insurance company, its affiliates, and its subsidiaries into one policy in order to provide like or enhanced coverage at a comparable or reduced premium to eliminate duplicate administrative costs associated with each policy and, if the option is available:

a. Whether a policyholder will be subject to underwriting when combining multiple policies into one policy; and

b. Whether a policyholder will be subject to a new contestable period, waiting periods, etc., when combining multiple policies into one policy.

(b) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80, an insurer issuing a small face amount life insurance policy through the home service distribution system shall provide the current disclosure included in Appendix A of the NAIC's Home Service Disclosure Model if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

If, for a particular policy form, the cumulative premiums may exceed the face for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefit attributable to the riders.

If an illustration has been provided that satisfies the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code, the disclosure requirements of subsection (b) of this section are deemed to have been met.

"**§ 58-60-60. Disclosure of payment methods.**

In accordance with the disclosure simplification standards set forth in G.S. 58-60-80, at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) What premium savings may be realized by a different method or less frequent mode of premium payment.

(2) That premiums are still due and payable by the person responsible for premium payments even when an agent does not collect the premiums.

(3) The mailing address for payment of premiums to the company.

(4) That the consumer is entitled to receive a receipt for premium payments when premium payments are made in cash or in person.

"**§ 58-60-65. Evidence of payment.**

For every premium collected on a policy of life or disability insurance marketed, sold, or serviced through the home service distribution system in this State, the agent, solicitor, or broker, or any employee acting on the agent, solicitor, or broker's behalf, collecting or receiving the premium in person shall:

(1) Maintain and furnish to the policyholder a receipt indicating payment of premiums, which shall provide the payor with clearly understandable, written evidence of payment at the time the premium is collected. At a minimum it shall clearly show:

a. The name of the payor.

b. The name of insured under each policy covered by the premium.

c. The amount paid.

d. The date paid.

e. The date paid-to-status of the policy.

f. The policy number.

g. The face amount and type of policy for which the payment will be credited.

h. The signature of the agent.

i. The agent's printed name and unique identification number.

j. The name, complete address, and phone number of the insurer.

(2) Remit to the insurer's home office or applicable district office, or deposit in a fiduciary account, the premium collected on behalf of the policyholder within 10 days of receipt from the premium payor or policy owner. In the event that the insurer utilizes an accounting system based on a monthly list bill, all premiums collected shall be credited from the date of collection. The premium shall be fully applied to that particular account.

"**§ 58-60-70. Proof of policy delivery.**

If an insurance policy marketed, sold, or serviced through the home service distribution system is delivered by an agent, solicitor, or broker, or an employee acting on the agent, solicitor, or broker's behalf, a receipt shall be signed by the purchaser and the agent acknowledging delivery to the purchaser of the policy or contract and the disclosures required by this Part. The receipt shall contain the name of the purchaser, the policy or contract number, the amount of the initial premium payment, and the date the delivery was completed. A policy shall be deemed to have been received six months after the date of issuance if the insured has paid premiums pursuant to the contract. All delivery receipts required by this section shall be retained by the company for not less than three years following delivery and shall be available for inspection upon request of the Commissioner.

"**§ 58-60-75. Company duties.**

Each insurer engaged in the home service distribution system in this State shall make available to the Commissioner for review:

(1) Established written procedures to audit agencies engaged in the home service system of distribution of policies in this State; and

(2) Proof of audits conducted periodically that reasonably ensure that the premium payor's records accurately reflect the premium due date and premium paid-to-status of the policy or policies purchased.

"**§ 58-60-80. Minimum disclosure language standards.**

All disclosure forms shall comply with the readability standards in Article 38 of this Chapter. It is presumed the disclosure form in Appendix A of the NAIC's Home Service Disclosure Model Act complies with this Part."

SECTION 3.6. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Small Face Amount Life Insurance Solicitation.

"**§ 58-60-85. Title and reference.**

This Part may be cited as the "Small Face Amount Life Insurance Disclosure Act".

"**§ 58-60-90. Purpose; intent; and scope.**

(a) The purpose of this Part is to establish standards that ensure meaningful information is provided to the purchasers of small face amount policies.

(b) This Part applies to any life insurance policy or certificate with an initial face amount of fifteen thousand dollars ($15,000) or less.

(c) This Part does not apply to:

(1) Variable life insurance.

(2) Individual and group annuity contracts.

(3) Credit life insurance.

(4) Group or individual policies of life insurance issued to members of an employer group or other permitted group where:

a. Every plan of coverage was selected by the employer or other group representative;

b. Some portion of the premium is paid by the group or through payroll deduction; and

c. Group underwriting or simplified underwriting is used.

(5) Policies and certificates where an illustration has been provided pursuant to the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code.

"**§ 58-60-95. Disclosure requirements.**

(a) An insurer issuing a small face amount policy shall provide the current disclosure included in Appendix A of the NAIC Disclosure for Small Face Amount Life Insurance Policies Model Act if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

(b) If, for a particular policy form, the cumulative premiums may exceed the face amount for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

(c) Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefits attributable to the riders.

"**§ 58-60-100. Insurer duties.**

The insurer and its producers shall have a duty to provide information to policyholders or certificate holders that ask questions about the disclosure statement."

SECTION 3.7. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 4. Regulation of Annuity Solicitation.

"**§ 58-60-105. Title and reference.**

This Part may be cited as the "Annuity Disclosure Act".

"**§ 58-60-110. Purpose; intent; scope.**

(a) The purpose of this Part is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. This Part specifies the minimum information that must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this Part is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

(b) This Part applies to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products.

(2) Immediate and deferred annuities that contain no nonguaranteed elements.

(3) Annuities used to fund:

a. An employee pension plan, which is covered by the Employee Retirement Income Security Act (ERISA);

b. A plan described by section 401(a), 401(k), or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

c. A governmental or church plan defined in section 414, or a deferred compensation plan of a state or local government or a tax exempt organization under section 457, of the Internal Revenue Code;

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

e. Structured settlement annuities;

f. Charitable gift annuities; or

g. Funding agreements.

(c) This Part shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement.

"**§ 58-60-115. Definitions.**

As used in this Part:

(1) "Annuity buyer's guide" or "buyer's guide" means the current NAIC Model Buyer's Guide to Fixed Deferred Annuities, including any appendix thereto.

(2) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only or from both determinable and guaranteed elements.

(5) "Disclosure document" means the document the contents of which are described in G.S. 58-60-125.

(6) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(7) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity".

(8) "Guaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(9) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(10) "Structured settlement annuity" means a "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

"**§ 58-60-120. Standards for the disclosure document and buyer's guide.**

(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant, at or before the time of application, shall be given both the disclosure document described in G.S. 58-60-125 and a copy of the buyer's guide.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the buyer's guide no later than five business days after the completed application is received by the insurer.

(1) With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a buyer's guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(2) With respect to an application received via the Internet:

a. Taking reasonable steps to make the buyer's guide available for viewing and printing on the insurer's web site shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's web site shall be deemed to satisfy the requirement that the disclosure

document be provided no later than five business days after receipt of the application.

(3) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the Department for a free annuity buyer's guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity buyer's guide.

(c) Where the buyer's guide and disclosure document are not provided at or before the time of application, a free look period of no less than 15 days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under State law or regulation.

"**§ 58-60-125. Contents of disclosure document.**

At a minimum, all of the following information shall be included in the disclosure document required under this Part:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity.

(2) The insurer's name and address.

(3) A description of the contract and its benefits, emphasizing its long-term nature, including the following, if appropriate:

a. The guaranteed, nonguaranteed, and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate.

b. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed.

c. Periodic income options both on a guaranteed and nonguaranteed basis.

d. Any value reductions caused by withdrawals from or surrender of the contract.

e. How values in the contract can be accessed.

f. The death benefit, if available, and how it will be calculated.

g. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract.

h. The impact of any rider, such as a long-term care rider.

(4) The specific dollar amount or percentage charges and fees with an explanation of how they apply.

(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

"**§ 58-60-130. Report to contract owners.**

For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least all of the following information:

(1) The beginning and end date of the current report period.

(2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period.

(3) The total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period.

(4) The amount of outstanding loans, if any, as of the end of the current report period."

PART IV. EMPLOYER-OWNED LIFE INSURANCE DISCLOSURE

SECTION 4. G.S. 58-58-75 reads as rewritten:

"**§ 58-58-75. Insurable interest in life and physical ability of employee or agent.**

(a) An employer, whether a partnership, joint venture, business trust, mutual association, corporation, any other form of business organization, or one or more individuals, or any religious, educational, or charitable corporation, institution or body, has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an employee for the benefit of such employer. Any principal shall have a life insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an agent for the benefit of such principal.

(b) An employee described in subsection (a) of this section shall be insured for the benefit of an employer described in subsection (a) of this section only if the employee receives written notification from the insurer of the existence of the coverage. The notice shall be provided to the employee within 30 days after the effective date of the coverage and shall include a statement that the employer may maintain the life insurance coverage on the employee even after employment is terminated.

(c) For nonkey or nonmanagerial employees, the aggregate amount of coverage shall be reasonably related to the benefits provided to the employees in the aggregate.

(d) With respect to employer-provided pension and welfare plans, the life insurance coverage purchased to finance the plans may only cover the lives of those employees and retirees who, at the time their lives were first insured under the plan, either are participants, or would be eligible to participate, upon the satisfaction of age, service, or similar eligibility criteria in the plan."

PART V. ACTUARIALLY SOUND ASSOCIATION GROUP ACCIDENT AND HEALTH PREMIUM RATES

SECTION 5. G.S. 58-51-80(1a) reads as rewritten:

"(1a) Under a policy issued to an association or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of 500 persons and shall have been

organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least five years; and shall have a constitution and bylaws that provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members; (ii) except for credit unions, the association or associations collect dues or solicit contributions from members; and (iii) the members, other than associate members, have voting privileges and representation on the governing board and committees. The policy is subject to the following requirements:

a. The policy may insure members of the association or associations, employees of the association or associations, or employees of members, or one or more of the preceding or all of any class or classes for the benefit of persons other than the employee's employer.

b. The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members. The premium rates for each association policy shall be developed, and applied to the certificates thereunder, on an actuarially sound basis.

c. Repealed by Session Laws 1997-259, s. 8."

PART VI. INDIVIDUAL ACCIDENT AND HEALTH INSURANCE RENEWAL RATE LIMITATIONS

SECTION 6. G.S. 58-51-95 is amended by adding a new subsection to read:

"(g) For policies subject to this section, an individual health insurer shall not increase an individual's renewal premium for continued health insurance coverage under the terms of the individual's health insurance policy based on any health status-related factors in relation to the individual or a dependent of the individual, including:

(1) Health status.

(2) Medical condition (including both physical and mental illnesses).

(3) Claims experience.

(4) Receipt of health care.

(5) Medical history."

PART VII. LARGE GROUP HEALTH INSURANCE SOLE PROPRIETOR EXEMPTION

SECTION 7. G.S. 58-65-60 is amended by adding a new subsection to read:

"(e3) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 7.1. G.S. 58-67-85 is amended by adding a new subsection to read:

"(d1) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(1), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 7.2. G.S. 58-51-80(c) reads as rewritten:

"(c) The term "employees" as used in this section shall be deemed to include, for the purposes of insurance hereunder, employees of a single employer, the officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. Employees shall be added to the group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term "employee" is defined as a nonseasonal person who works on a full-time basis, with a normal work week of 30 or more hours and who is otherwise eligible for coverage, but does not include a person who works on a part-time, temporary, or substitute basis. The term "employer" as used herein may be deemed to include the State of North Carolina, any county, municipality or corporation, or the proper officers, as such, of any unincorporated municipality or any department or subdivision of the State, county, such corporation, or municipality determined by conditions pertaining to the employment. When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

PART VIII. NEWBORN COVERAGE REINSTATEMENT

SECTION 8. G.S. 58-51-30(b) reads as rewritten:

"(b) Every health benefit plan, as defined in ~~G.S. 58-3-167,~~ G.S. 58-51-115(a)(1), that provides benefits for any sickness, illness, or disability of any minor child or that provides benefits for any medical treatment or service furnished by a health care provider or institution to any minor child shall provide the benefits for those occurrences beginning with the moment of the child's birth if the birth occurs while the plan is in force. Every health benefit plan shall extend coverage to a newborn child without requirements for prior notification unless an additional premium charge to add the dependent is due. If an additional premium charge is due to cover the dependent, the health benefit plan shall cover the newborn child from the moment of birth if the newborn is enrolled within 30 days after the date of birth. Foster children and adopted children shall be treated the same as newborn infants and eligible for coverage on the same basis upon placement in the foster home or placement for adoption. Every health benefit plan shall extend coverage to a foster child or adopted child without

requirements for prior notification unless an additional premium charge to add the foster child or adopted child is due. If an additional premium charge is due to cover the foster child or adopted child, the health benefit plan shall cover the foster child or adopted child upon placement in the foster home or placement for adoption if the foster child or adopted child is enrolled within 30 days after the placement in the foster home or placement for adoption."

PART IX. LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES TECHNICAL CORRECTIONS

SECTION 9. G.S. 58-51-15(a)(2)b. reads as rewritten:

"b. This policy contains a provision limiting coverage for preexisting conditions. Preexisting conditions are covered under this policy _____ (insert number of months or days, not to exceed one year) after the effective date of coverage. Preexisting conditions mean "those conditions for which medical advice, diagnosis, care, or treatment was received or recommended within the one-year period immediately preceding the effective date of the person's coverage." ~~Credit~~ Except for the excepted benefits described in G.S. 58-68-25(b), credit for having satisfied some or all of the preexisting condition waiting periods under previous health benefits coverage shall be given in accordance with G.S. 58-68-30."

SECTION 9.1. G.S. 58-51-15(h) reads as rewritten:

"(h) Preexisting Condition Exclusion Clarification. – Sub-subdivision (a)(2)b. of this section does not apply ~~to:~~ to

~~(1)~~ ~~Policies~~ policies issued to eligible individuals under G.S. 58-68-60.

~~(2)~~ ~~Excepted benefits as described in G.S. 58-68-25(b).~~"

PART X. SMALL EMPLOYER HEALTH REINSURANCE POOL BOARD AMENDMENTS

SECTION 10. G.S. 58-50-150(b) reads as rewritten:

"(b) Within 30 days after January 1, 1992, the Commissioner shall give notice to all carriers of the time and place for the initial organizational meeting, which shall take place within 90 days after the notice from the Commissioner. The members shall select the initial Board, subject to the Commissioner's approval. The Board shall consist of nine six members. There shall be no more than two members of the Board representing any one carrier. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. The voting rights to determine initial Board membership shall be weighted based upon net group health benefit plan premium derived from this State in the previous calendar year. Thereafter, voting Voting rights shall be based on net group health benefit plan premium derived from small employer business. The Board shall at all times, to the extent possible, include at least one domestic insurance company licensed to transact accident and health insurance, one HMO, one nonprofit hospital or medical service plan. Six Five of the

members of the Board shall be small employer carriers. In approving selection of the Board, the Commissioner shall assure that all members are fairly represented."

PART XI. EQUITABLE ENROLLMENT PERIOD FOR SUPPLEMENTAL MEDICARE PLANS

SECTION 11. G.S. 58-54-45(a) reads as rewritten:

"(a) In addition to any rule adopted under this Article that is directly or indirectly related to open enrollment, an insurer shall at least make standardized Medicare Supplement Plans A, C, and J available to persons eligible for Medicare by reason of disability before age 65. This action shall be taken without regard to medical condition, claims experience, or health status. To be eligible, a person must submit an application during the six-month period beginning with the first month the person first enrolls in Medicare Part B. For those persons that are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision."

PART XII. REVOCATION AND SUSPENSION TECHNICAL CORRECTION

SECTION 12. G.S. 58-3-100(c) reads as rewritten:

"(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgement of the claim shall be one of the following:

(1) A statement made to the claimant or to the claimant's legal representative advising that the claim is being investigated.
(2) Payment of the claim.
(3) A bona fide written offer of settlement.
(4) A written denial of the claim.

A claimant includes an insured, a beneficiary of life or annuity contract, a health care provider, or a health care facility that is responsible for directly making the claim with an insurer, HMO, service corporation, or MEWA. With respect to a claim under an accident, health, or disability policy, if the acknowledgement sent to the claimant indicates that the claim remains under investigation, within 45 days after receipt by the insurer of the initial claim, the insurer shall send a claim status report to the insured and every 45 days thereafter until the claim is paid or denied. The report shall give details sufficient for the insured to understand why processing of the claim has not been completed and whether the insurer needs additional information to process the claim. If the claim acknowledgement includes information about why processing of the claim has not been completed and indicates whether additional information is needed, it may satisfy the requirement for the initial claim status report. This subsection does not apply to HMOs, service corporations, MEWAs or insurers subject to G.S. 58-3-225."

PART XIII. HEALTH BENEFIT PLAN TRAVEL EXPENSES COVERAGE

SECTION 13. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-270. Insurance coverage for travel expenses associated with obtaining care.**

(a) As used in this section, the terms "health benefit plan" and "insurer" have the meaning as found in G.S. 58-3-167.

(b) Each health benefit plan shall provide coverage for reasonable transportation, lodging, and boarding expenses incurred by a covered person to access covered health care services when the insurer, through its referral or network contracting arrangements, requires the covered person to travel more than 250 miles from the covered person's residence to obtain those covered health care services from a network provider.

(c) The coverage specified by this section is limited to transportation, lodging and boarding expenses incurred by a covered person when required by the health plan to travel to access covered health care services as provided in subsection (b) of this section when those health care services are not also available from a network provider who is located within 250 miles of the covered person's residence.

(d) The coverage required by this section shall be subject to plan requirements including any overall health care benefit plan aggregate limitations and shall last for the duration of the health care benefit plan's coverage of the treatment subject to this section. An insurer may utilize a per diem limit for the expenses specified in subsection (c) of this section as long as the limit reflects the high-low per diem method as annually published by the Internal Revenue Service or the Domestic Per Diem Rate as published annually by the federal General Services Administration in the area where the health care services are being obtained. All travel, lodging, and boarding expenses in excess of the insurer's per diem or the health benefit plan's aggregate limits shall be the responsibility of the covered person.

(e) An insurer may require prior approval of all expenses subject to this section.

(f) The coverage required by this section shall apply only to those travel, lodging, and boarding expenses incurred by the covered person accessing covered health care services in accordance with this section. If the covered person accessing covered health care services in accordance with this section is a minor, the health benefit plan shall also cover the expenses specified in subsection (c) of this section for a parent or guardian who accompanies the minor."

PART XIV. CREDIT INSURANCE AMENDMENTS

SECTION 14. G.S. 58-57-5 is amended by adding a new subdivision to read:

"(5a) "Critical period coverage" means insurance coverage for which benefits are limited to a stated number of payments or the payments end with the expiration of the policy, whichever is less."

SECTION 14.1. G.S. 58-57-50(b) reads as rewritten:

"(b) The refund of premiums for decreasing term credit life insurance shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy. The refund of premiums for ~~decreasing term credit life insurance~~

~~in transactions of 60 months duration or less and the refund of premiums for~~ single interest credit property insurance and single interest physical damage insurance shall be equal to the amount computed by the sum of digits formula known as the "Rule of 78." ~~The refund of premiums for decreasing term credit life insurance in transactions of more than 60 months duration shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy.~~ The refund of premiums for level term credit life insurance and dual interest credit property insurance and dual interest physical damage insurance shall be equal to the pro rata unearned gross premiums."

SECTION 14.2. G.S. 58-57-55 reads as rewritten:

"**§ 58-57-55. Issuance of policies.**

All policies of credit life insurance and credit accident and health insurance shall be issued only by an insurer authorized to do business in this State and shall be issued only through holders of licenses or authorizations issued by the Commissioner. ~~All~~ With the exception of credit insurance issued in accordance with G.S. 58-57-105, all policies of credit life insurance and credit accident and health insurance shall be delivered or issued for delivery in this ~~State only by an insurer authorized to do an insurance business therein, and shall be issued only through holders of licenses or authorizations issued by the Commissioner.~~ State. The enrollment of debtors under a group policy issued to a creditor and authorized under this Article shall not constitute the issuance of a policy of insurance."

SECTION 14.3. G.S. 58-57-60 is amended by adding a new subsection to read:

"(d) A claim acknowledgement shall be sent to the claimant within 30 days after receiving written or electronic notice of the claim. Acknowledgement shall include the following:

(1) A statement made to the insured or the claimant advising that the claim is being investigated.

(2) Payment of the claim.

(3) A bona fide written offer of settlement.

(4) A written denial of the claim."

SECTION 14.4. G.S. 58-57-110 reads as rewritten:

"**§ 58-57-110. Credit unemployment insurance rate standards; policy provisions.**

(a) Each year the Commissioner shall prescribe a minimum incurred loss ratio standard requirement to develop a premium rate reasonable in relation to the benefits provided by credit unemployment insurance coverage. The following requirements must be met:

(1) Coverage is provided or offered, with or without underwriting, to all debtors regardless of age who are working for salary, wages, or other employment income for at least 30 hours per week and have done so for 12 consecutive months;

(2) Coverage sets forth a definition of involuntary unemployment as a loss of employment income that may include, but is not limited to, loss caused by layoff, general strike, termination of employment, or lockout;

(3) Coverage does not contain any exclusion except: debts with irregular monthly payments; voluntary forfeiture of salary, wages, or other employment income; resignation; retirement; sickness, disease, or normal pregnancy; or loss of income due to termination as a result of willful misconduct that is a violation of some established, definite rule of conduct, a forbidden act, or willful dereliction of duty, or criminal ~~misconduct.~~misconduct;

(4) As long as there is no required time period limitation for registration, the insured may be required to register with the State unemployment office in order to qualify for benefit payments under the credit unemployment coverage. Qualification for State unemployment benefits shall not be required in order to qualify for benefit payments under the credit unemployment coverage.

(b) The Commissioner may approve other policy provisions and coverages consistent with the purposes of unemployment coverage.

(c) Joint coverage rates for credit unemployment insurance shall be one and two-thirds (1 2/3) times the approved single rate of coverage.

(d) The refund provision for credit unemployment insurance shall be equal to the pro rata unearned gross premium."

PART XV. MEDICARE SUPPLEMENTAL INSURANCE POLICY CHANGES

SECTION 15. G.S. 58-54-25(f) reads as rewritten:

"(f) No insurer shall use attained age as a structure or methodology for its Medicare supplement insurance rates. ~~rates unless the structure or methodology is fully disclosed to the applicant at the time of application or to the insured at the time of delivery if the purchase is by mail order. All types of solicitation materials shall clearly indicate that the premiums are based on attained age, which means that those premiums will increase each year. The Commissioner shall prescribe by rule the format and content of the attained age rating disclosure notice. The notice shall include:~~

~~(1) A statement that attained age rating means that rates increase as the insured ages or by the age group in which the insured is.~~

~~(2) An illustration based on actual attained age that states the dollar amount of premium increase for the insured over a period of not less than 10 policy years and that displays the life expectancy of the insured at the beginning of the period.~~

~~(3) A statement that premiums for other Medicare supplement policies that are on issue age bases do not increase as the insured ages.~~

~~(4) A statement that other Medicare supplement policies that are on issue age bases should be compared to policies on attained age bases.~~"

SECTION 15.1 G.S. 58-54-10 reads as rewritten:

"**§ 58-54-10. Standards for policy provisions.**

(a) No policy in force in this State shall contain benefits that duplicate benefits provided by Medicare.

(b) The Commissioner shall adopt rules to establish specific standards for provisions of policies. Such standards shall be in addition to and in accordance with applicable State law. No requirement of State law relating to minimum required policy benefits, other than the minimum standards contained in this Article, applies to policies. The standards may include without limitation to: terms of renewability; initial and subsequent conditions of eligibility; nonduplication of coverage; probationary periods; benefit limitations, exceptions, and reductions; elimination periods; requirements for replacement; recurrent conditions; and definitions of terms.

(c) The Commissioner may adopt rules that specify prohibited policy provisions not otherwise specifically authorized by State law that, in the opinion of the Commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a policy.

(d) Notwithstanding any other provision of State law, a policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. A policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(e) Repealed by Session Laws 1991 (Regular Session, 1992), c. 815, s. 3.

(f) An insurer shall use issue age as a structure or methodology for its Medicare supplement insurance rates. An insurer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the Commissioner.

(g) Except as otherwise provided in this subsection, an insurer shall not file for approval with the Commissioner more than one policy or certificate of each type for each standard policy. An insurer may offer, with the approval of the Commissioner, up to four additional policies or certificates of the same type for the same standard policy, one for each of the following:

(1) The inclusion of new or innovative benefits.

(2) The addition of either direct response or agent marketing methods.

(3) The addition of either guaranteed issue or underwritten coverage.

(4) The offering of coverage to individuals eligible for Medicare by reason of disability.

As used in this section, "type" means an individual policy, a group policy, an individual Medicare select policy, or a group Medicare select policy.

(h) Except as otherwise provided in this subsection, an insurer shall continue to make available for purchase any policy or certificate issued on and after January 1, 2004 that has been approved by the Commissioner. A policy or certificate shall not be considered to be available for purchase unless the insurer has actively offered the policy or certificate for sale in the immediately preceding 12 month period.

(i) An insurer may discontinue the availability of a policy or certificate if the insurer provides to the Commissioner in writing its decision to discontinue at least 30 days prior to the effective date of the discontinuance. Upon providing notice to the Commissioner, the insurer shall no longer offer for sale the policy or certificate in this State. An insurer that discontinues the availability of a policy or certificate pursuant to

this subsection shall not file for approval a new policy or certificate of the same type for the same standard Medicare supplement policy as the discontinued policy or certificate for a period of five years from the effective date of the discontinuance. The period of discontinuance may be reduced if the Commissioner determines that a shorter period is appropriate. The following shall be considered a discontinuance under this subsection:

(1) The sale or transfer of the insurer's Medicare supplement business to another insurer.

(2) A change in the rating structure or methodology of the policy or certificate unless:

a. The insurer provides actuarial memorandum, in a form and manner prescribed by the Commissioner, describing the manner in which the revised rating structure or methodology and resultant rates differ from the existing rating structure or methodology and rates, and

b. The insurer does not subsequently put into effect a change of rates or rating factors that would cause a change in the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum. The Commissioner may approve a change to the differential if the Commissioner finds the change to be in the public interest."

PART XVI. EFFECT OF HEADINGS, SEVERABILITY, AND EFFECTIVE DATES

SECTION 16. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SECTION 16.1. If any section or provision of this act is declared unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional, preempted, or otherwise invalid.

SECTION 16.2. Section 1 of this act becomes effective October 1, 2005. Sections 2 through 8 and Sections 9, 9.1, 13, 14, 14.1, 14.2, 14.3, 14.4, 15, and 15.1 of this act become effective January 1, 2004, and apply to policies or certificates issued or renewed on or after that date. The remainder of this act is effective when it becomes law and applies to policies or certificates issued or renewed on or after that date.

HOUSE BILL 339:
Life and Health Omnibus-AB

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Wright
Date:	June 3, 2003	**Summary by:**	Tim Hovis
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: House Bill 339 makes numerous substantive and technical changes to laws governing the regulation of insurance including:

Conforms Article 56 of Chapter 58 governing third party administrators, to the National Association of Insurance Commissioners (NAIC) model act on third party administrators.

Amends G.S. 58-58-145 which defines group annuity contracts, to require the insurer of such contracts to issue individual certificates of coverage to each annuitant.

Amends current disclosure requirements regarding the solicitation of life insurance products and annuities.

Amends G.S. 58-58-75 which gives a principle or an employer an insurable interest in the life or physical ability of an employee or agent, to require insurers to notify employees of the existence of such policies.

Amends G.S. 58-51-80 which defines group accident and health insurance, to require that association premium rates for accident and health insurance be actuarially sound and that associations be rated as a single group when the coverage provided is not employer-based.

Amends G.S. 58-51-95 to limit an insurer's ability to use an individual's own claims' experience when developing the individual's renewal rates on individual health insurance policies.

Amends G.S. 58-65-60 governing subscribes' contracts, to exempt a sole proprietor from the full-time basis or the 30-hour workweek requirements to be eligible for large group health coverage like the proprietor's full-time employees.

Adds a new section to Article 3 to require group health insurers for an employer to provide upon the policyholders' request, the group's experience information.

Amends G.S. 58-54-45 governing the issuance of Medicare Supplement Plans by reason of disability, to require insurer to allow persons retroactively enrolled in Medicare Part B the same six-month open enrollment period for Medicare Supplemental Plans as person enrolled in Medicare Part B without a retroactive effective date of coverage.

Adds a new section to Article 3 to require health benefit plans to provide coverage for designated travel expenses when the required distance traveled threshold is met.

Section 1 of the act becomes effective October 1, 2005. The remainder of the act (except for sections 10-12) becomes effective January 1, 2004. Sections 10, 11, and 12 (which include technical corrections) become effective when the act becomes law.

BILL ANALYSIS: Frank Folger, from the Department of Insurance provided the following section-by-section explanation.

PART I. THIRD PARTY ADMINISTRATOR REWRITE (Sections 1 –1.12). This part adopts the NAIC model statute, which provides reciprocity, among other benefits.

Section 1. Repeals the existing definitions section for Article 56 – Third Party Administrators- G.S. 58-56-2.

Section 1.1 enacts new G.S. 58-56-2 with revised and expanded definitions. Added terms include "insurance producer", "nonresident administrator" and "Uniform Application".

Section 1.2 makes technical clarifying changes to the wording of G.S. 58-56-6., governing the written agreement requirements.

Section 1.3 rewrites and reorganizes portions of G.S. 58-56-16 regarding Commissioner access to third party administrator (TPA) books and records and adds new subsections (e) through (i) to:

- Provide that TPA records and books in the possession or control of the Commissioner are confidential and privileged, not public record, not subject to discovery, not subject to subpoena, and inadmissible in evidence in any private civil action; and provide that immunity from testifying on the documents applies to the Commissioner and anyone receiving that material while acting under the authority of the Commissioner.
- Provide that the Commissioner can share such material with and receive such material from other state, federal and international regulatory and law enforcement agencies and the NAIC, provided it is agreed the confidentiality and privilege will be maintained; and can enter into agreements governing the sharing of such material consistent with the rules in that subsection.
- Provide that disclosure by the Commissioner does not constitute waiver of the privilege or claim of confidentiality;
- Clarify that the confidentiality and privilege requirements do not restrict the Commissioner from releasing final adjudicated action including for cause terminations.

Section 1.4. Repeals the existing TPA licensing statute.

Section 1.5. Enacts new G.S. 58-56-52. Home state certificate of authority or license. This new statute:

- Provides for licensure or issuance of a certificate of authority by a TPA's home state (as defined in G.S. 58-56-3) upon application using the Uniform Application and submission of a $100 filing fee. The Uniform Application must include or be accompanied by designated organizational documents, bylaws and internal regulatory documents, NAIC Biographical Affidavits for the officers, directors and all individuals responsible for the conduct of the affairs of the applicant, audited financial statements, a description of the business plan of the TPA, and any other pertinent information..
- Requires the TPA to provide for inspection and examination by the Commissioner all TPA contracts with insurers or others using the TPA's services and all accounts, records and files.
- Authorizes the Commissioner to refuse to issue a certificate of authority or license to a TPA upon determining that the TPA or any individual responsible for conducting the affairs of the TPA:
  - Is not competent
  - Is not trustworthy

- Is not financially responsible
- Is not of good personal and business reputation
- Has had an insurance or an administrator certificate of authority or license denied or revoked for cause by any jurisdiction
- Or upon determining that any of the grounds for denial, suspension or revocation of a certificate of authority under G.S. 58-56-72 exists.

- Provides for the perpetuity of a license or certificate of authority.
- Requires the TPA to notify the Commissioner of any material change in change of ownership, control, or other fact or circumstance affecting its qualification for a certificate of authority or license and requires the Commissioner to notify the producer database maintained by the NAIC or its affiliates or subsidiaries.

Section 1.6. Repeals the existing provision on waiver of application for license, G.S. 58-56-56.

Section 1.7. Enacts new G.S.58-56-57. Registration requirement, to require any person underwriting, collecting charges or premiums from, or adjusting or settling claims on NC residents in connection with a self-funded plan for life, health or annuity coverage to register annually with the Commissioner.

Section 1.8. Enacts new G.S. 58-56-62 to require each TPA licensed under G.S. 58-56-52 to file an annual report, including an independent CPA-audited financial report verified by at least two officers of the TPA with contents and format as prescribed by the Commissioner. The annual report must include the names and addresses of all the insurers with which the TPA has contracted in the past fiscal year and must be submitted along with an annual $100 filing fee. The Commissioner must review the annual report before September 1 of each year and either certify that, according to the annual report, the TPA has a positive net worth and is in good standing, or note any deficiencies found in the annual report; or update the aforementioned NAIC electronic database consistent with the Commissioner's review and assessment.

Section 1.9. Repeals existing G.S. 58-56-66 Grounds for suspension or revocation of license.

Section 1.10. Enacts new G.S. 58-56-67. Nonresident administrator certificate of authority, which:

- Requires any TPA performing TPA services in N.C. that does not carry a N.C. license or certificate of authority to file a Uniform Application with the Commissioner accompanied by certificate or license from the TPA's home state and that state has adopted the NAIC Third Party Administrator Statute or substantially similar laws governing TPAs in order to obtain a nonresident administrator certificate of authority for N.C.
- Requires a $100 filing fee as part of the application process.
- Subject the nonresident TPA to examination of its accounts, records, and files by the Commissioner.
- Exempts from the requirements of a nonresident certificate of authority nonresident TPAs that only perform administrator services on a group policy or plan with no more 100 insureds residing in N.C.
- Authorizes the Commissioner to refuse to issue a nonresident certificate of authority if the Commissioner determines that events or information obtained following the licensure of the TPA in its home state, the TPA cannot satisfy the requirements of Article 56 or

grounds exist for the home state's suspension or revocation of the TPA's license or certificate.

Section 1.11. Enacts new G.S. 58-56-72 to require denial, suspension or revocation of certificate of authority if the Commissioner finds the TPA:

- Is financially unsound
- Is using methods or practices rendering its future transactions hazardous or injurious to insured persons or the public.
- Has failed to pay any judgment rendered against it in N.C. within 60 days after the judgment has become final.

The Commissioner, after notice and hearing, may deny, suspend, or revoke the certificate of authority or license if the Commissioner finds the TPA:

- Has violated any lawful rule or order of the Commissioner or any provision of the N.C. insurance laws.
- Or any person or entity exercising control of the TPA has refused to cooperate with examination by the Commissioner.
- Has, without cause, refused to pay proper claims or fulfill its contractual obligations.
- Fails to satisfy, at any time, the conditions upon which the license or certificate of authority was initially granted.
- Or any of the individuals responsible for the conduct of the TPA enters a plea or guilt or nolo contendere or is found guilty of a felony.
- Is under suspension or revocation in another state.
- Has failed to timely file its annual report pursuant to G.S. 58-56-62 if a resident TPA or its statement and filing fee, as applicable, if a nonresident administrator.

The Commissioner may without advance notice or hearing, immediately suspend the certificate of authority or license if the Commissioner finds that one or more of the following circumstances exist:

- The TPA is insolvent or impaired.
- A proceeding for receivership, rehabilitation or other delinquency proceeding has been instituted in any state.
- The TPA's financial condition or business practices pose an imminent threat to the public health, safety or welfare of N.C. citizens.

The Commissioner may impose a fine in lieu of suspension or revocation.

Section 1.12. Prohibits acting as a TPA in N.C. without a resident certificate of authority or a non-resident certificate of authority.

PART II. GROUP ANNUITY CONTRACTS

Section 2. Amends G.S. 58-58-145 requires group annuity insurers to issue certificates of coverage to each annuitant via the policyholder on a form approved by the Commissioner.

PART III. DISCLOSURES FOR ANNUITIES AND LIFE INSURANCE

Sections 3. through 3.7. Adopts the new NAIC models on Annuity, Home Service Life Insurance and Small Face Amount Life Insurance Disclosure and updates our current life insurance disclosure provisions in Article 60 of Chapter 58 to reflect the current NAIC Life Insurance Disclosure model act.

This Part reorganizes Article 60 to create a life insurance and annuity product disclosure article, with separate parts for each different product disclosure requirement. Each model specifically addresses disclosure requirements to assist the consumer when making a purchasing decision by requiring notice of the feature, including potentially negative aspects of each product. For example:

(1) Sellers of small face life insurance (insurance with a face amount less than $15,000) would have to disclose up front that premiums paid-in could exceed the face value of the policy, if that is a possibility at any time;

(2) Sellers of life insurance through the home service distribution system must disclose whether the policyholder is allowed to change the method of premium payment, whether the policyholder can combine multiple policies from the same company or its affiliates or subsidiaries into one policy and what the impact, if any, such a consolidation would have regarding underwriting, waiting periods, contestable periods and the like, and they would have to provide and maintain evidence of payment of premiums; and

(3) Sellers of annuities would have to provide to the applicant for an annuity a copy of the NAIC Model Guide to Fixed Deferred Annuities and a disclosure document, containing information on the insurer, specifics of the contract including its long-term nature, the specific amount of charges applicable to the contract, and information on the variability of guaranteed rates and the current guaranteed rate.

PART IV. EMPLOYER OWNED LIFE INSURANCE DISCLOSURE

Section 4. Amends G.S. 58-58-75 to require employers that purchase life insurance policies on the lives of their employees for the benefit of the employer to disclose that practice to its employees within 30 days of the effective date of the coverage and also notify the employees that the policy can be maintained even after termination of employment with the employer.

Part V. Requires association group accident and health premium rates to be actuarially sound and to rate associations as a single group when the coverage is not employer based.

This Part reorganizes Article 60 to create a life insurance and annuity product disclosure article, with separate parts for each different product disclosure requirement. Each model specifically addresses disclosure requirements to assist the consumer when making a purchasing decision by requiring notice of the potentially negative aspects of each product. For example: sellers of small face life insurance (insurance with a face amount less than $15,000) would have to disclose that premiums paid in could exceed the face value of the policy.

Part IV. EMPLOYER-OWNED LIFE INSURANCE DISCLOSURE

Section 4. Amends G.S. 58-58-75 to require employers that purchase life insurance policies on the lives of their employees for the benefit of the employer to disclose that practice to its employees within 30 days of the effective date of the coverage and, if applicable, that these employer-owned life insurance (sometimes referred to as COLI for "corporate-owned life insurance") policies can be maintained after the employment has terminated.

Part V. ACTUARIALLY SOUND ASSOCIATION GROUP ACCIDENT AND HEALTH PREMIUM RATES

Section 5. Amends G.S. 58-51-80 to requires association group accident and health premium rates to be actuarially sound and to rate associations as a single group when the coverage is not employer based in order to prevent reunderwriting practices in which insurers are re-rating individual members in (non-employer based) associations as single one man groups each, rather than using the entire association's experience to determine renewal rates.

Part VI. INDIVIDUAL ACCIDENT AND HEALTH INSURANCE RENEWAL RATE LIMITATIONS

Section 6. Amends G.S. 58-51-95 to limits an individual accident and health insurer's ability to determine an individual's renewal rate based on the individual's health status-related factors including: health status; medical condition (including both physical and mental illnesses); claims' experience; duration from issue; receipt of health care; medical history; or genetic information.

Part VII. LARGE GROUP HEALTH INSURANCE SOLE PROPRIETOR EXEMPTION

Sections 7. -7.2. Amend G.S. 58-65-60, 58-67-85, and 58-51-80(c) to exempt, for large group health insurance (more than 50 employees), a sole proprietor from the full-time basis or 30 hour workweek requirements in order to be eligible for the same coverage provided to the sole proprietor's employees.

Part VIII. NEWBORN COVERAGE REINSTATEMENT

Section 8. Amends 58-51-30(b) to correct an oversight in a 2001 enactment and again apply newborn coverage provisions to a more comprehensive list of insurance lines rather than just major medical insurance. Before the 2001 Session, newborn coverage requirements applied to generally all types of health insurance coverage that provided coverage to children. When changes were made in the 2001 session to expand coverage to provide for foster and adopted children, an erroneous reference was made to G.S. 58-3-167 and thus coverage requirements were inadvertently limited to apply only to major medical health coverages. This amendment would return coverage to its status before the 2001 error.

Part IX. LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES TECHNICAL CORRECTIONS

Section 9. Amends G.S. 58-51-15(a) (2)b. and 58-51-15(h) to technically correct a definitional problem regarding pre-existing conditions as applied to limited health, supplemental health, and

specified disease policies. HB 760 in the 2001 Session corrected an "unintended consequence" which threatened the availability of limited health, supplement health and specified disease policies. This availability problem was caused by earlier legislation imposing portability requirements on these policies and subjecting them to the same pre-existing conditions rules as other health insurance policies. In correcting the availability problem, HB 760 created a different problem in the form of a definitional gap for "pre-existing condition" respecting these policies. This amendment technically fixes this new problem.

Part X. REQUIRED GROUP HEALTH BENEFIT PLAN EXPERIENCE DISCLOSURES

Section 10. creates a new statute G.S. 58-3-172.1 to require a group health insurer for an employer to provide, upon the group policyholders' request, the group's experience information. Employer groups have complained to the Department that they are unable to shop their health coverage around to other insurers effectively because new insurers want to see the group's claims experience but current insurers are not required to provide that information. This amendment requires insurers to release the information upon request and will address a common complaint over which the Department currently has little or no authority.

Part XI. EQUITABLE ENROLLMENT PERIOD FOR SUPPLEMENTAL MEDICARE PLANS

Section 11. Amends G.S. 58-54-45(a) to allows persons retroactively enrolled in Part B Medicare 6 months to enroll in Medicare Supplement Plans A, C, and J after notice of the retroactive enrollment decision so they are not penalized or precluded from enrolling in those plans. This proposal would assist persons who are eligible for Medicare retroactively. These persons are always disabled under age 65 and by virtue of the retroactive enrollment miss the deadline for open enrollment for Medicare Supplement Plans. This amendment provides that in the case of retroactive enrollment, the Medicare beneficiary should be entitled to a six-month open enrollment for Medicare Supplement Plans, beginning with the month the beneficiary receives notice of the retroactive enrollment, so that the beneficiary is entitled to the same period for enrollment in supplement plans like everyone else who becomes eligible due to a disability.

Part XII. REVOCATION AND SUSPENSION TECHNICAL CORRECTION

Section 12. Amends G.S. 58-3-100(c) to technically correct the revocation and suspension law to include "beneficiary of a life or annuity contract" as a claimant to clarify said beneficiary's entitlement to the acknowledgement of a claim within 30 days of receipt.

Part XIII. HEALTH BENEFIT PLAN TRAVEL EXPENSES COVERAGE

Section 13. Creates a new G.S. 58-3-270 to mandate health benefit plan coverage for certain travel expenses associated with obtaining care when the person must travel more than 250 miles, one way, to obtain treatment. This amendment codifies a long standing Department policy that health benefit plans provide coverage for certain travel expenses for an insured, and a parent/guardian if the insured is a child, when the insurer requires the person to travel a significant distance from their home to obtain in-network care.

Part XIV. CREDIT INSURANCE AMENDMENT

Sections 14. Through 14.4. Amends G.S. 58-57-5, 58-57-50(b), 58-57-55, 58-57-60, and 58-57-110 in Article 57 (Credit Insurance) to codify Departmental policy or to clarify statutory requirements. The amendments:

(1) Define "critical period coverage" – This is a definition presently permitted by the Department.

(2) Allow credit card credit insurance to be provided through out-of-state insurance contracts (consistent with existing market conditions) - Credit card coverages are almost exclusively provided through out-of-state contracts because the large credit card companies are not located in North Carolina. This amendment will allow the continued availability of this type of insurance in North Carolina;

(3) Set an appropriate refund method for decreasing term credit life insurance;

(4) Require acknowledgement of credit insurance claims not paid within 60 days – Currently there are no provisions in the credit insurance provisions to require acknowledgement of a claim. This would bring credit insurance in uniformity with other lines regarding acknowledgement of a claim; and

(5) Allow a requirement of registration with the state unemployment office for involuntary unemployment benefits under a credit unemployment policy but prohibit the placing of a deadline for that registration or qualification for state unemployment benefits to qualify for the insurance benefits – Some Involuntary Unemployment Insurance (IUI) insurers have submitted forms that require an insured to register with the state unemployment office within 15 or 30 days of the loss of employment in order to qualify for credit involuntary unemployment benefits under the coverage. This deadline for registering would restrict payment of an otherwise valid claim. This amendment prohibits IUI insurers from imposing a deadline for registration with the state unemployment office, prohibits conditioning benefits upon qualification for state unemployment benefits but allows a requirement of registration (without deadline) with the state unemployment office in order to qualify for benefits.

PART XV. MEDICARE SUPPLEMENTAL INSURANCE POLICY CHANGES.

Sections 15 and 15.1. These sections would provide that for Medicare supplemental insurance policies, insurers must use issuance age, not attained age, to establish rates.

PART XVI. EFFECT OF HEADINGS, SEVERABILITY AND EFFECTIVE DATES

Sections 16 through 16.2. These sections contain a provision on the naming of headings for parts, contain a severability clause, and make Section 1 of the act effective October 1, 2005. Sections 2 through 8, 9, 9.1, 13, 14 through 14.4. 15 and 15.1 become effective January 1, 2004 and the remainder of the act becomes effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 339 DATE 6/17/03

S. B. No. _____ Amendment No. _____

COMMITTEE SUBSTITUTE Third Edition - PCS(H339-PCS30362-RG-22) (to be filled in by Principal Clerk)

Rep.)
Sen.) Berger

1 moves to amend the bill on page 29, line 21

2 ( ) WHICH CHANGES THE TITLE

3 ~~by~~ through page 31, line 22

4 by deleting those lines;

5

6 and by renumbering the remaining Parts

7 and sections accordingly;

8

9 and on page 31, line 33,

10 by deleting "14.4, 15, and 15.1" and

11 substituting "and 14.4"

12

13

14

15

16

17

18

19

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 339

Committee Substitute Favorable 4/24/03

Committee Substitute #2 Favorable 4/30/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H339-PCS30386-RG-26

Short Title: Life and Health Insurance Omnibus.-AB (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO CONFORM NORTH CAROLINA'S THIRD PARTY ADMINISTRATOR ARTICLE TO REVISIONS TO THE NAIC MODEL THIRD PARTY ADMINISTRATOR STATUTE; REQUIRE GROUP ANNUITY INSURERS TO ISSUE INDIVIDUAL CERTIFICATES OF COVERAGE TO EACH ANNUITANT; REORGANIZE ARTICLE 60 OF CHAPTER 58 OF THE GENERAL STATUTES AND AMEND CURRENT DISCLOSURE REQUIREMENTS FOR SOLICITATION OF LIFE INSURANCE PRODUCTS AND ANNUITIES; REQUIRE INSURERS TO NOTIFY EMPLOYEES OF THE EXISTENCE OF EMPLOYER-OWNED LIFE INSURANCE POLICIES WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF COVERAGE; REQUIRE THAT ASSOCIATION PREMIUM RATES FOR ACCIDENT AND HEALTH INSURANCE BE ACTUARIALLY SOUND AND THAT ASSOCIATIONS BE RATED AS A SINGLE GROUP WHEN THE COVERAGE PROVIDED IS NOT EMPLOYER-BASED; LIMIT AN INDIVIDUAL ACCIDENT AND HEALTH INSURER'S USE OF AN INDIVIDUAL'S OWN CLAIMS' EXPERIENCE TO DEVELOP THE INDIVIDUAL'S RENEWAL RATE; EXEMPT A SOLE PROPRIETOR FROM THE FULL-TIME BASIS OR THIRTY-HOUR WORKWEEK REQUIREMENTS TO BE ELIGIBLE FOR LARGE GROUP HEALTH COVERAGE LIKE THE PROPRIETOR'S FULL-TIME EMPLOYEES; CORRECT AN INADVERTENT CROSS-REFERENCE IN ORDER TO REAPPLY NEWBORN COVERAGE TO A MORE COMPREHENSIVE GROUP OF INSURERS; TECHNICALLY CORRECT AN OMISSION REGARDING PROVISIONS GOVERNING PREEXISTING CONDITIONS FOR LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES; DECREASE THE TOTAL NUMBER OF MEMBERS THAT SERVE ON THE

SMALL EMPLOYER REINSURANCE POOL BOARD FROM NINE TO SIX; ALLOW PERSONS RETROACTIVELY ENROLLED IN MEDICARE PART B THE SAME SIX-MONTH OPEN ENROLLMENT PERIOD FOR MEDICARE SUPPLEMENT PLANS AS PERSONS WHO ENROLLED IN MEDICARE PART B WITHOUT A RETROACTIVE EFFECTIVE DATE OF COVERAGE; TECHNICALLY CORRECT THE REVOCATION AND SUSPENSION LAW TO INCLUDE A BENEFICIARY OF A LIFE OR ANNUITY CONTRACT AS A CLAIMANT; MANDATE HEALTH BENEFIT COVERAGE FOR DESIGNATED TRAVEL EXPENSES WHEN THE REQUIRED DISTANCE TRAVELED THRESHOLD IS MET; AND MAKE TECHNICAL CORRECTIONS TO THE CREDIT INSURANCE LAWS.

The General Assembly of North Carolina enacts:

PART I. THIRD PARTY ADMINISTRATOR ACT REWRITE

SECTION 1. G.S. 58-56-2 is repealed.

SECTION 1.1. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-3. Definitions.**

As used in this Article:

(1) "Administrator", "third party administrator", and "TPA" mean a person who directly or indirectly underwrites, collects, or charges premiums from, or adjusts or settles claims on, residents of this State in connection with life, annuity, or health coverage offered or provided by an insurer, except any of the following:

a. An employer, or a wholly owned direct or indirect subsidiary of an employer, on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer.

b. A union on behalf of its members.

c. An insurer that is authorized to transact insurance in this State pursuant to Articles 1 through 67 of this Chapter.

d. An insurance producer licensed to sell life, annuity, or health coverage in this State, whose activities are limited exclusively to the sale of insurance.

e. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.

f. A trust and its trustees, agents, and employees acting pursuant to a trust established in conformity with 29 U.S.C. § 186.

g. A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees and employees acting pursuant to the trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code.

h. A credit union or a financial institution that is subject to supervision or examination by federal or State banking authorities, or a mortgage lender, to the extent it collects and remits premiums to licensed insurance producers or to limited lines producers or authorized insurers in connection with loan payments.

i. A credit card issuing company that advances for and collects insurance premiums or charges from its credit card holders who have authorized collection.

j. A person who adjusts or settles claims in the normal course of that person's practice or employment as a licensed attorney and who does not collect charges or premiums in connection with life, annuity, or health coverage.

k. An adjuster licensed by this State whose activities are limited to adjustment of claims.

l. A person licensed as a managing general agent in this State, whose activities are limited exclusively to the scope of activities conveyed under the license.

m. An administrator who is affiliated with an insurer and who only performs the contractual duties (between the administrator and the insurer) of an administrator for the direct and assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator's books and records to the Commissioner, upon a request from the Commissioner.

(2) "Affiliate or affiliated" means an entity or person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Commissioner" means the Commissioner of Insurance of this State.

(4) "Control" means the term as defined in G.S. 58-19-5(2).

(5) "GAAP" means United States generally accepted accounting principles consistently applied.

(6) "Home state" means the District of Columbia and any state or territory of the United States in which an administrator is incorporated or maintains its principal place of business. If neither the state in which the administrator is incorporated nor the state in which it maintains its principal place of business has adopted the NAIC Third Party Administrator Statute, or a substantially similar law governing administrators, the administrator may declare another state in which it conducts business to be its "home state".

(7) "Insurance producer" means a person who sells, solicits, or negotiates a contract of insurance as those terms are defined in this Article.

(8) "Insurer" means an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health

maintenance organization organized under Article 67 of this Chapter, and a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(9) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(10) "Nonresident administrator" means a person who is applying for licensure or is licensed in any state other than the administrator's home state.

(11) "Person" means an individual or a business entity.

(12) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(13) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(14) "Underwrites" or "underwriting" includes the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer or self-funded plan and also includes the overall planning and coordinating of a benefits program.

(15) "Uniform Application" means the current version of the NAIC Uniform Application for Third Party Administrators."

SECTION 1.2. G.S. 58-56-6 reads as rewritten:

"**§ 58-56-6. Written agreement necessary.**

(a) No TPA may act as a TPA without a written agreement between the TPA and the insurer. The written agreement shall be retained as part of the official records of both the insurer and the TPA for the duration of the agreement and for five years thereafter. The agreement shall contain all provisions required by this Article, ~~to the extent those requirements apply to the functions performed by the TPA.~~ except insofar as those requirements do not apply to the functions performed by the TPA.

(b) The agreement shall include a statement of duties that the TPA is expected to perform on behalf of the insurer and the ~~kinds of insurance the TPA is to be authorized to administer.~~lines, classes, or types of insurance for which the TPA is to be authorized to administer. The agreement shall provide for underwriting or other standards pertaining to the business underwritten by the insurer.

(c) The insurer or TPA may, with written notice, terminate the written agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the TPA during the pendency of any dispute regarding the cause for termination of the agreement. The insurer ~~must~~ shall fulfill any lawful obligations with respect to policies affected by the agreement, regardless of any dispute between the insurer and the TPA."

SECTION 1.3. G.S. 58-56-16 reads as rewritten:

"**§ 58-56-16. Records to be kept.**

(a) Every TPA shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance record keeping and must be maintained for a period of at least five years after the date of their creation.

~~(b) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. The Commissioner shall keep confidential any trade secrets contained in those books and records, including the identity and addresses of policyholders and certificate holders, except that the Commissioner may use the information in any judicial or administrative proceeding instituted against the TPA.~~

(c) The insurer shall own the records generated by the TPA pertaining to the insurer, but the TPA shall retain the right to continuing access to books and records to permit the TPA to fulfill all of its contractual obligations to insured parties, claimants, and the insurer.

(d) In the event the insurer and the TPA cancel their agreement, notwithstanding the provisions of subsection (a) of this section, the TPA may, by written agreement with the insurer, transfer all records to a new TPA rather than retain them for five years. In this case, the new TPA shall acknowledge, in writing, that it is responsible for retaining the records of the prior TPA as required in subsection (a) of this section.

(e) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. Any documents, materials, or other information in the possession or control of the Commissioner that are furnished by a TPA, insurer, insurance producer, or an employee or agent thereof acting on behalf of the TPA, insurer, or insurance producer, or obtained by the Commissioner in an investigation shall be confidential by law and privileged, shall not constitute a public record as defined by G.S. 132-1, shall not be subject to subpoena, shall not be subject to discovery, and shall not be admissible in evidence in any private civil action. However, the Commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.

(f) Neither the Commissioner nor any person who receives documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (e) of this section.

(g) In order to assist in the performance of the Commissioner's duties, the Commissioner:

(1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (e) of this section, with other State, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, and with State, federal, and international law enforcement authorities, provided

that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(2) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(3) May enter into agreements governing sharing and use of information consistent with this subsection.

(h) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (g) of this section.

(i) Nothing in this Article shall prohibit the Commissioner from releasing final, adjudicated actions including for-cause terminations that are open to public inspection pursuant to Chapter 132 of the General Statutes or to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or its subsidiaries."

SECTION 1.4. G.S. 58-56-51 is repealed.

SECTION 1.5. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-52. Home state certificate of authority or license.**

(a) A person shall apply to be a TPA in its home state upon the Uniform Application and shall receive a certificate of authority or license from the Commissioner of its home state prior to performing any function of a TPA in this State. Each application shall be accompanied by a nonrefundable filing fee of one hundred dollars ($100.00).

(b) The Uniform Application shall include or be accompanied by the following information and documents:

(1) All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, and other applicable documents and all amendments to those documents.

(2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the applicant.

(3) NAIC Biographical Affidavit for the individuals who are responsible for the conduct of affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership,

association, or limited liability company; any shareholders or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the applicant; and any other person who exercises control or influence over the affairs of the applicant.

(4) Audited annual financial statements or reports for the two most recent fiscal years that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two fiscal years, the Uniform Application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years and for any month during the current fiscal year for which the financial statements or reports have been completed. The applicant shall also include any other information the Commissioner requires in order to review the current financial condition of the applicant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include all of the following:

a. Amounts shown on the consolidated audited financial report shall be shown on the worksheet.

b. Amounts for each entity shall be stated separately.

c. Explanations of consolidating and eliminating entries.

(5) A statement describing the business plan including information on staffing levels and activities proposed in this State and nationwide. The plan shall provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping, and underwriting.

(6) Any other pertinent information required by the Commissioner.

(c) A TPA licensed or applying for licensure under this section shall make available for inspection by the Commissioner copies of all contracts with insurers or other persons utilizing the services of the TPA.

(d) A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

(e) The Commissioner may refuse to issue a certificate of authority or license if the Commissioner determines that the TPA, or any individual responsible for the conduct of affairs of the TPA, is not competent, trustworthy, financially responsible, or of good personal and business reputation, has had an insurance or an administrator certificate of authority or license denied or revoked for cause by any jurisdiction, or if the Commissioner determines that any of the grounds set forth in G.S. 58-56-72 exists with respect to the TPA.

(f) A certificate of authority or license issued under this section shall remain valid, unless surrendered, suspended, or revoked by the Commissioner, for so long as the TPA continues in business in this State and remains in compliance with this Article.

(g) A TPA licensed or applying for licensure under this section shall immediately notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a certificate of authority or license in this State. The Commissioner shall report any such changes to the producer database maintained by the NAIC or affiliates or subsidiaries of the NAIC."

SECTION 1.6. G.S. 58-56-56 is repealed.

SECTION 1.7. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-57. Registration requirement.**

A person who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this State in connection with life, annuity, or health coverage provided by a self-funded plan shall register with the Commissioner annually, verifying its status as herein described in a format prescribed by the Commissioner."

SECTION 1.8. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-62. Annual report and filing.**

(a) Each TPA licensed under G.S. 58-56-52 shall file an annual report for the preceding calendar year with the Commissioner on or before July 1 of each year or within such extension of time as the Commissioner for good cause may grant. The annual report shall include an audited financial statement performed by an independent certified public accountant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the information required under G.S. 58-56-52(b)(4)a. through c. The report shall be in the form and contain such matters as the Commissioner prescribes and shall be verified by at least two officers of the TPA.

(b) The annual report shall include the complete names and addresses of all insurers with which the administrator had agreements during the preceding fiscal year.

(c) At the time of filing its annual report, the administrator shall pay a nonrefundable filing fee of one hundred dollars ($100.00).

(d) The Commissioner shall review the most recently filed annual report of each administrator on or before September 1 of each year. Upon completion of its review, the Commissioner shall either:

(1) Issue a certification to the administrator that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is currently licensed and in good standing, or noting any deficiencies found in the annual report and financial statements; or

(2) Update any electronic database maintained by the National Association of Insurance Commissioners, or its affiliates or subsidiaries, indicating that the annual report shows that the

administrator has a positive net worth as evidenced by audited financial statements and is in compliance with existing law, or noting any deficiencies found in the annual report."

SECTION 1.9. G.S. 58-56-66 is repealed.

SECTION 1.10. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-67. Nonresident administrator certificate of authority.**

(a) Unless a TPA has obtained a home state certificate of authority or license in this State under G.S. 58-56-52, any TPA who performs administrator duties in this State shall obtain a nonresident administrator certificate of authority or license in accordance with this section by filing with the Commissioner the Uniform Application accompanied by a letter of certification from the home state of the TPA. In lieu of requiring a TPA to file a letter of certification with the Uniform Application, the Commissioner may verify the nonresident administrator's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries.

(b) A TPA shall not be eligible for a nonresident administrator certificate of authority or license under this section if it does not hold a certificate of authority as a resident in a home state that has adopted the NAIC Third Party Administrator Statute or a substantially similar law governing TPAs.

(c) Except as provided in subsections (b) and (h) of this section, the Commissioner shall issue to the TPA a nonresident administrator certificate of authority or license promptly upon receipt of a complete application.

(d) Unless notified by the Commissioner that the Commissioner is able to verify the nonresident TPA's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners, or its affiliates or subsidiaries, each nonresident TPA annually shall file a statement that its home state administrator certificate of authority or license remains in force and has not been revoked or suspended by its home state during the preceding year. The statement required by this subsection shall be filed by November 1 each year.

(e) At the time of filing the statement required under subsection (d) of this section or if the Commissioner has notified the nonresident administrator that the Commissioner is able to verify the nonresident administrator's home state certificate of authority or license status through an electronic database, the nonresident TPA shall pay, no later than November 1, a nonrefundable filing fee of one hundred dollars ($100.00).

(f) A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

(g) A nonresident TPA is not required to hold a nonresident administrator certificate of authority or license in this State if the TPA's duties in this State are limited to the administration of a group policy or plan of insurance and no more than a total of 100 persons insured for all plans reside in this State.

(h) The Commissioner may refuse to issue a nonresident administrator certificate of authority or license, or delay the issuance of a nonresident administrator certificate of authority or license, if the Commissioner determines that, due to events or information obtained subsequent to the home state's licensure of the TPA, the nonresident TPA cannot satisfy the requirements of this Article or that grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license. If the Commissioner refuses to issue a certificate of authority of license pursuant to this section, the Commissioner shall give written notice of its determination to the Commissioner of the home state, and the Commissioner may delay the issuance of a nonresident administrator certificate of authority to the nonresident TPA until the Commissioner determines that the administrator can satisfy the requirements of this Article and that no grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license."

SECTION 1.11. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-72. Grounds for denial, suspension, or revocation of certificate of authority.**

(a) The certificate of authority or license of a TPA shall be denied, suspended, or revoked if the Commissioner finds that the TPA:

(1) Is in an unsound financial condition;

(2) Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this State hazardous or injurious to insured persons or the public; or

(3) Has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final.

(b) The Commissioner may, after notice and opportunity for hearing, deny, suspend, or revoke the certificate of authority or license of a TPA if the Commissioner finds that the TPA:

(1) Has violated any lawful rule or order of the Commissioner or any provision of the insurance laws of this State;

(2) Has refused to be examined or to produce its accounts, records, and files for examination, or if any individual responsible for the conduct of affairs of the TPA has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination when required by the Commissioner, including:

a. Members of the board of directors, board of trustees, executive committee, or other governing board or committee;

b. The principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company;

c. Any shareholder or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the TPA; and

d. Any other person who exercises control or influence over the affairs of the TPA;

(3) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the TPA to secure full payment or settlement of such claims;

(4) Fails, at any time, to meet any qualification for which issuance of the certificate could have been refused had the failure then existed and been known to the Commissioner;

(5) Or any of the individuals responsible for the conduct of its affairs has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether adjudication was withheld, including:

a. Members of the board of directors, board of trustees, executive committee or other governing board or committee;

b. The principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company;

c. Any shareholder or member holding directly or indirectly ten percent or more of its voting stock, voting securities, or voting interest; and

d. Any other person who exercises control or influence over its affairs;

(6) Is under suspension or revocation in another state; or

(7) Has failed to timely file its annual report pursuant to G.S. 58-56-62 if a resident administrator or its statement and filing fee, as applicable, pursuant to G.S. 58-56-67(d) and (e) if a nonresident administrator.

(c) The Commissioner may, without advance notice or hearing, immediately suspend the certificate of authority or license of a TPA if the Commissioner finds that one or more of the following circumstances exist:

(1) The TPA is insolvent or impaired.

(2) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the TPA has been commenced in any state.

(3) The financial condition or business practices of the TPA otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this State.

(d) If the Commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of authority issued under this part, the Commissioner may, in lieu of suspension or revocation, impose a fine upon the TPA."

SECTION 1.12. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-73. Prohibited practices.**

No person shall act as, offer to act as, or hold himself or herself out as a TPA in this State without a valid domestic or nonresident administrator certificate of authority issued by the Commissioner."

PART II. GROUP ANNUITY CONTRACTS

SECTION 2. G.S. 58-58-145 reads as rewritten:

"**§ 58-58-145. Group annuity contracts defined; ~~requirements.~~requirements; issuance of individual certificates.**

(a) Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable to more than one person, is a group annuity contract. The person, firm or corporation to whom or to which such contract is issued, as herein provided, is the holder of the contract. The term "annuitant" means any person to whom or which payments are made under the group annuity contract. No authorized insurer shall deliver or issue for delivery in this State any group annuity contract except upon a group of annuitants that conforms to the following: under a contract issued to an employer, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, the stipulated payments on which shall be paid by the holder of such contract either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the employees covered by such contract, and providing a plan of retirement annuities under a plan which permits all of the employees of such employer or of any specified class or classes thereof to become annuitants. Any such group of employees may include retired employees, and may include officers and managers as employees, and may include the employees of subsidiary or affiliated corporations of a corporation employer, and may include the individual proprietors, partners and employees of affiliated individuals and firms controlled by the holders through stock ownership, contract or otherwise.

(b) The insurer of a group annuity contract shall issue to the policyholder, within 30 days of the effective date of the group annuity contract, an individual certificate for delivery to each annuitant which:

(1) Identifies the annuity to which the annuitant is entitled.

(2) States the name of the person to whom the annuity is payable.

(3) Discloses all of the rights and obligations of the insurer, the policyholder, the annuitant, and the persons to whom the annuity is payable with respect to the group annuity contract.

G.S. 58-3-150 applies to the form of the individual certificate required by this subsection.

(c) Each group annuity contract shall include a provision that the insurer will issue to the policyholder within 30 days of the effective date of the contract, for delivery to each annuitant, an individual certificate setting forth the information described in subsection (b) of this section."

PART III. DISCLOSURES FOR ANNUITIES AND LIFE INSURANCE

SECTION 3. The title of Article 60 of Chapter 58 of the General Statutes reads as rewritten:

"Article 60.

~~Regulation of Life Insurance Solicitation.~~

Standards of Disclosure for Annuities and Life Insurance."

SECTION 3.1. Article 60 of Chapter 58 of the General Statues is amended by designating G.S. 58-60-1 through G.S. 58-60-35 as:

"Part 1. Regulation of Life Insurance Solicitation."

SECTION 3.2. G.S. 58-60-1 reads as rewritten:

"**§ 58-60-1. ~~Purpose of Article.~~Short title; purpose.**

(a) This Part may be cited as the "Life Insurance Disclosure Act".

(b) The purpose of this ~~Article~~ Part is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for ~~their~~ the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and to improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

This ~~Article~~ Part does not prohibit an insurer ~~to use~~ from using additional material ~~which~~ that is not in violation of Articles 1 through 64 of this Chapter nor any other statute or regulation."

SECTION 3.3. G.S. 58-60-5 reads as rewritten:

"**§ 58-60-5. ~~Scope of Article;~~ Scope; exemptions.**

(a) Except as otherwise provided in this ~~Article,~~ Part, this ~~Article~~ Part applies to any solicitation, negotiation or procurement of life insurance occurring within this State. This ~~Article~~ Part applies to any issuer of a life insurance contract, including fraternal benefit societies.

(b) Unless otherwise specifically included, this ~~Article~~ Part does not apply to:

(1) ~~Annuities,~~Individual group annuity contracts.

(2) Credit life ~~insurance,~~insurance.

(3) Group life ~~insurance,~~ insurance (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy).

(4) Life insurance policies issued in connection with pension and welfare plans as defined by and that are subject to the federal Employee Retirement Income Security Act of 1974 ~~(ERISA),~~(ERISA).

(5) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(c) The policy summary in this ~~Article~~ Part is not required for policies that are sold subject to rules adopted by the Commissioner for life insurance illustrations."

SECTION 3.4. G.S. 58-60-10(7)k. reads as rewritten:

"k. The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in subparagraph e of this paragraph shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space. If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor, it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in this State."

SECTION 3.5. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Home Service Life Insurance Solicitation.

"**§ 58-60-40. Title and reference.**

This Part may be cited as the "Home Service Disclosure Act".

"**§ 58-60-45. Purpose.**

The purpose of this Part is to establish standards that ensure that meaningful information is provided to the purchasers of insurance policies distributed through the home service distribution system.

"**§ 58-60-50. Definitions.**

As used in this Part:

(1) "Home service distribution system" means a system in which insurance products are marketed, sold, or serviced by agents in person in the home or business of the insured, owner, or premium payor in assigned territories and may be identified as "debits". The policies are issued on a monthly or more frequent premium payment basis and agents are charged with the responsibilities of servicing the debit, which may include the collection of premium payments in the home or designated location on a monthly or more frequent basis, along with other services normally rendered.

(2) "Small face amount life insurance policy" means an insurance policy or certificate with a face amount of fifteen thousand dollars ($15,000) or less.

"**§ 58-60-55. General disclosure requirements.**

(a) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80 and at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) Whether the policyholder is allowed to change the method of premium payment and any conditions for that change;

(2) Whether or not at a subsequent date a policyholder may combine multiple policies from the same insurance company, its affiliates, and its subsidiaries into one policy in order to provide like or enhanced coverage at a comparable or reduced premium to eliminate duplicate administrative costs associated with each policy and, if the option is available:

a. Whether a policyholder will be subject to underwriting when combining multiple policies into one policy; and

b. Whether a policyholder will be subject to a new contestable period, waiting periods, etc., when combining multiple policies into one policy.

(b) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80, an insurer issuing a small face amount life insurance policy through the home service distribution system shall provide the current disclosure included in Appendix A of the NAIC's Home Service Disclosure Model if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

If, for a particular policy form, the cumulative premiums may exceed the face for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefit attributable to the riders.

If an illustration has been provided that satisfies the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code, the disclosure requirements of subsection (b) of this section are deemed to have been met.

"**§ 58-60-60. Disclosure of payment methods.**

In accordance with the disclosure simplification standards set forth in G.S. 58-60-80, at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) What premium savings may be realized by a different method or less frequent mode of premium payment.

(2) That premiums are still due and payable by the person responsible for premium payments even when an agent does not collect the premiums.

(3) The mailing address for payment of premiums to the company.

(4) That the consumer is entitled to receive a receipt for premium payments when premium payments are made in cash or in person.

"**§ 58-60-65. Evidence of payment.**

For every premium collected on a policy of life or disability insurance marketed, sold, or serviced through the home service distribution system in this State, the agent, solicitor, or broker, or any employee acting on the agent, solicitor, or broker's behalf, collecting or receiving the premium in person shall:

(1) Maintain and furnish to the policyholder a receipt indicating payment of premiums, which shall provide the payor with clearly understandable, written evidence of payment at the time the premium is collected. At a minimum it shall clearly show:
   a. The name of the payor.
   b. The name of insured under each policy covered by the premium.
   c. The amount paid.
   d. The date paid.
   e. The date paid-to-status of the policy.
   f. The policy number.
   g. The face amount and type of policy for which the payment will be credited.
   h. The signature of the agent.
   i. The agent's printed name and unique identification number.
   j. The name, complete address, and phone number of the insurer.

(2) Remit to the insurer's home office or applicable district office, or deposit in a fiduciary account, the premium collected on behalf of the policyholder within 10 days of receipt from the premium payor or policy owner. In the event that the insurer utilizes an accounting system based on a monthly list bill, all premiums collected shall be credited from the date of collection. The premium shall be fully applied to that particular account.

"**§ 58-60-70. Proof of policy delivery.**

If an insurance policy marketed, sold, or serviced through the home service distribution system is delivered by an agent, solicitor, or broker, or an employee acting on the agent, solicitor, or broker's behalf, a receipt shall be signed by the purchaser and the agent acknowledging delivery to the purchaser of the policy or contract and the disclosures required by this Part. The receipt shall contain the name of the purchaser, the policy or contract number, the amount of the initial premium payment, and the date the delivery was completed. A policy shall be deemed to have been received six months after the date of issuance if the insured has paid premiums pursuant to the contract. All delivery receipts required by this section shall be retained by the company for not less than three years following delivery and shall be available for inspection upon request of the Commissioner.

"**§ 58-60-75. Company duties.**

Each insurer engaged in the home service distribution system in this State shall make available to the Commissioner for review:

(1) Established written procedures to audit agencies engaged in the home service system of distribution of policies in this State; and

(2) Proof of audits conducted periodically that reasonably ensure that the premium payor's records accurately reflect the premium due date and premium paid-to-status of the policy or policies purchased.

"**§ 58-60-80. Minimum disclosure language standards.**

All disclosure forms shall comply with the readability standards in Article 38 of this Chapter. It is presumed the disclosure form in Appendix A of the NAIC's Home Service Disclosure Model Act complies with this Part."

SECTION 3.6. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Small Face Amount Life Insurance Solicitation.

"**§ 58-60-85. Title and reference.**

This Part may be cited as the "Small Face Amount Life Insurance Disclosure Act".

"**§ 58-60-90. Purpose; intent; and scope.**

(a) The purpose of this Part is to establish standards that ensure meaningful information is provided to the purchasers of small face amount policies.

(b) This Part applies to any life insurance policy or certificate with an initial face amount of fifteen thousand dollars ($15,000) or less.

(c) This Part does not apply to:

(1) Variable life insurance.

(2) Individual and group annuity contracts.

(3) Credit life insurance.

(4) Group or individual policies of life insurance issued to members of an employer group or other permitted group where:

a. Every plan of coverage was selected by the employer or other group representative;

b. Some portion of the premium is paid by the group or through payroll deduction; and

c. Group underwriting or simplified underwriting is used.

(5) Policies and certificates where an illustration has been provided pursuant to the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code.

"**§ 58-60-95. Disclosure requirements.**

(a) An insurer issuing a small face amount policy shall provide the current disclosure included in Appendix A of the NAIC Disclosure for Small Face Amount Life Insurance Policies Model Act if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

(b) If, for a particular policy form, the cumulative premiums may exceed the face amount for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

(c) Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefits attributable to the riders.

"**§ 58-60-100. Insurer duties.**

The insurer and its producers shall have a duty to provide information to policyholders or certificate holders that ask questions about the disclosure statement."

SECTION 3.7. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 4. Regulation of Annuity Solicitation.

"**§ 58-60-105. Title and reference.**

This Part may be cited as the "Annuity Disclosure Act".

"**§ 58-60-110. Purpose; intent; scope.**

(a) The purpose of this Part is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. This Part specifies the minimum information that must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this Part is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

(b) This Part applies to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products.

(2) Immediate and deferred annuities that contain no nonguaranteed elements.

(3) Annuities used to fund:

a. An employee pension plan, which is covered by the Employee Retirement Income Security Act (ERISA);

b. A plan described by section 401(a), 401(k), or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

c. A governmental or church plan defined in section 414, or a deferred compensation plan of a state or local government or a tax exempt organization under section 457, of the Internal Revenue Code;

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

e. Structured settlement annuities;

f. Charitable gift annuities; or

g. Funding agreements.

(c) This Part shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers and there is a

direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement.

"**§ 58-60-115. Definitions.**

As used in this Part:

(1) "Annuity buyer's guide" or "buyer's guide" means the current NAIC Model Buyer's Guide to Fixed Deferred Annuities, including any appendix thereto.

(2) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only or from both determinable and guaranteed elements.

(5) "Disclosure document" means the document the contents of which are described in G.S. 58-60-125.

(6) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(7) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity".

(8) "Guaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(9) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(10) "Structured settlement annuity" means a "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

"**§ 58-60-120. Standards for the disclosure document and buyer's guide.**

(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant, at or before the time of application, shall be given both the disclosure document described in G.S. 58-60-125 and a copy of the buyer's guide.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the buyer's guide no later than five business days after the completed application is received by the insurer.

(1) With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a buyer's guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(2) With respect to an application received via the Internet:

a. Taking reasonable steps to make the buyer's guide available for viewing and printing on the insurer's web site shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's web site shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(3) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the Department for a free annuity buyer's guide. In lieu of the foregoing statement, an insurer may include a statement

that the prospective applicant may contact the insurer for a free annuity buyer's guide.

(c) Where the buyer's guide and disclosure document are not provided at or before the time of application, a free look period of no less than 15 days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under State law or regulation.

"**§ 58-60-125. Contents of disclosure document.**

At a minimum, all of the following information shall be included in the disclosure document required under this Part:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity.

(2) The insurer's name and address.

(3) A description of the contract and its benefits, emphasizing its long-term nature, including the following, if appropriate:

a. The guaranteed, nonguaranteed, and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate.

b. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed.

c. Periodic income options both on a guaranteed and nonguaranteed basis.

d. Any value reductions caused by withdrawals from or surrender of the contract.

e. How values in the contract can be accessed.

f. The death benefit, if available, and how it will be calculated.

g. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract.

h. The impact of any rider, such as a long-term care rider.

(4) The specific dollar amount or percentage charges and fees with an explanation of how they apply.

(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

"**§ 58-60-130. Report to contract owners.**

For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least all of the following information:

(1) The beginning and end date of the current report period.

(2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period.

(3) The total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period.

(4) The amount of outstanding loans, if any, as of the end of the current report period."

PART IV. EMPLOYER-OWNED LIFE INSURANCE DISCLOSURE

SECTION 4. G.S. 58-58-75 reads as rewritten:

"**§ 58-58-75. Insurable interest in life and physical ability of employee or agent.**

(a) An employer, whether a partnership, joint venture, business trust, mutual association, corporation, any other form of business organization, or one or more individuals, or any religious, educational, or charitable corporation, institution or body, has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an employee for the benefit of such employer. Any principal shall have a life insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an agent for the benefit of such principal.

(b) An employee described in subsection (a) of this section shall be insured for the benefit of an employer described in subsection (a) of this section only if the employee receives written notification from the insurer of the existence of the coverage. The notice shall be provided to the employee within 30 days after the effective date of the coverage and shall include a statement that the employer may maintain the life insurance coverage on the employee even after employment is terminated.

(c) For nonkey or nonmanagerial employees, the aggregate amount of coverage shall be reasonably related to the benefits provided to the employees in the aggregate.

(d) With respect to employer-provided pension and welfare plans, the life insurance coverage purchased to finance the plans may only cover the lives of those employees and retirees who, at the time their lives were first insured under the plan, either are participants, or would be eligible to participate, upon the satisfaction of age, service, or similar eligibility criteria in the plan."

PART V. ACTUARIALLY SOUND ASSOCIATION GROUP ACCIDENT AND HEALTH PREMIUM RATES

SECTION 5. G.S. 58-51-80(1a) reads as rewritten:

"(1a) Under a policy issued to an association or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of 500 persons and shall have been organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least five years; and shall have a constitution and bylaws that provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members; (ii) except for credit unions, the

association or associations collect dues or solicit contributions from members; and (iii) the members, other than associate members, have voting privileges and representation on the governing board and committees. The policy is subject to the following requirements:

a. The policy may insure members of the association or associations, employees of the association or associations, or employees of members, or one or more of the preceding or all of any class or classes for the benefit of persons other than the employee's employer.

b. The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members. The premium rates for each association policy shall be developed, and applied to the certificates thereunder, on an actuarially sound basis.

c. Repealed by Session Laws 1997-259, s. 8."

PART VI. INDIVIDUAL ACCIDENT AND HEALTH INSURANCE RENEWAL RATE LIMITATIONS

SECTION 6. G.S. 58-51-95 is amended by adding a new subsection to read:

"(g) For policies subject to this section, an individual health insurer shall not increase an individual's renewal premium for continued health insurance coverage under the terms of the individual's health insurance policy based on any health status-related factors in relation to the individual or a dependent of the individual, including:

(1) Health status.
(2) Medical condition (including both physical and mental illnesses).
(3) Claims experience.
(4) Duration from issue.
(5) Receipt of health care.
(6) Medical history.
(7) Genetic information."

PART VII. LARGE GROUP HEALTH INSURANCE SOLE PROPRIETOR EXEMPTION

SECTION 7. G.S. 58-65-60 is amended by adding a new subsection to read:

"(e3) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 7.1. G.S. 58-67-85 is amended by adding a new subsection to read:

"(d1) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(1), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 7.2. G.S. 58-51-80(c) reads as rewritten:

"(c) The term "employees" as used in this section shall be deemed to include, for the purposes of insurance hereunder, employees of a single employer, the officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. Employees shall be added to the group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term "employee" is defined as a nonseasonal person who works on a full-time basis, with a normal work week of 30 or more hours and who is otherwise eligible for coverage, but does not include a person who works on a part-time, temporary, or substitute basis. The term "employer" as used herein may be deemed to include the State of North Carolina, any county, municipality or corporation, or the proper officers, as such, of any unincorporated municipality or any department or subdivision of the State, county, such corporation, or municipality determined by conditions pertaining to the employment. When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

PART VIII. NEWBORN COVERAGE REINSTATEMENT

SECTION 8. G.S. 58-51-30(b) reads as rewritten:

"(b) Every health benefit plan, as defined in ~~G.S. 58-3-167,~~ G.S. 58-51-115(a)(1), that provides benefits for any sickness, illness, or disability of any minor child or that provides benefits for any medical treatment or service furnished by a health care provider or institution to any minor child shall provide the benefits for those occurrences beginning with the moment of the child's birth if the birth occurs while the plan is in force. Every health benefit plan shall extend coverage to a newborn child without requirements for prior notification unless an additional premium charge to add the dependent is due. If an additional premium charge is due to cover the dependent, the health benefit plan shall cover the newborn child from the moment of birth if the newborn is enrolled within 30 days after the date of birth. Foster children and adopted children shall be treated the same as newborn infants and eligible for coverage on the same basis upon placement in the foster home or placement for adoption. Every health benefit plan shall extend coverage to a foster child or adopted child without requirements for prior notification unless an additional premium charge to add the foster child or adopted child is due. If an additional premium charge is due to cover the foster

child or adopted child, the health benefit plan shall cover the foster child or adopted child upon placement in the foster home or placement for adoption if the foster child or adopted child is enrolled within 30 days after the placement in the foster home or placement for adoption."

PART IX. LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES TECHNICAL CORRECTIONS

SECTION 9. G.S. 58-51-15(a)(2)b. reads as rewritten:

"b. This policy contains a provision limiting coverage for preexisting conditions. Preexisting conditions are covered under this policy _____ (insert number of months or days, not to exceed one year) after the effective date of coverage. Preexisting conditions mean "those conditions for which medical advice, diagnosis, care, or treatment was received or recommended within the one-year period immediately preceding the effective date of the person's coverage." ~~Credit~~ Except for the excepted benefits described in G.S. 58-68-25(b), credit for having satisfied some or all of the preexisting condition waiting periods under previous health benefits coverage shall be given in accordance with G.S. 58-68-30."

SECTION 9.1. G.S. 58-51-15(h) reads as rewritten:

"(h) Preexisting Condition Exclusion Clarification. – Sub-subdivision (a)(2)b. of this section does not apply ~~to:~~ to

~~(1)~~ ~~Policies~~ policies issued to eligible individuals under G.S. 58-68-60.

~~(2)~~ ~~Excepted benefits as described in G.S. 58-68-25(b).~~"

PART X. SMALL EMPLOYER HEALTH REINSURANCE POOL BOARD AMENDMENTS

SECTION 10. G.S. 58-50-150(b) reads as rewritten:

"(b) ~~Within 30 days after January 1, 1992, the Commissioner shall give notice to all carriers of the time and place for the initial organizational meeting, which shall take place within 90 days after the notice from the Commissioner.~~ The members shall select the initial Board, subject to the Commissioner's approval. The Board shall consist of ~~nine~~ six members. There shall be no more than two members of the Board representing any one carrier. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. ~~The voting rights to determine initial Board membership shall be weighted based upon net group health benefit plan premium derived from this State in the previous calendar year. Thereafter, voting~~ Voting rights shall be based on net group health benefit plan premium derived from small employer business. The Board shall at all times, to the extent possible, include at least one domestic insurance company licensed to transact accident and health insurance, one HMO, one nonprofit hospital or medical service plan. ~~Six~~ Five of the members of the Board shall be small employer carriers. In approving selection of the Board, the Commissioner shall assure that all members are fairly represented."

PART XI. EQUITABLE ENROLLMENT PERIOD FOR SUPPLEMENTAL MEDICARE PLANS

SECTION 11. G.S. 58-54-45(a) reads as rewritten:

"(a) In addition to any rule adopted under this Article that is directly or indirectly related to open enrollment, an insurer shall at least make standardized Medicare Supplement Plans A, C, and J available to persons eligible for Medicare by reason of disability before age 65. This action shall be taken without regard to medical condition, claims experience, or health status. To be eligible, a person must submit an application during the six-month period beginning with the first month the person first enrolls in Medicare Part B. For those persons that are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision."

PART XII. REVOCATION AND SUSPENSION TECHNICAL CORRECTION

SECTION 12. G.S. 58-3-100(c) reads as rewritten:

"(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgement of the claim shall be one of the following:

(1) A statement made to the claimant or to the claimant's legal representative advising that the claim is being investigated.
(2) Payment of the claim.
(3) A bona fide written offer of settlement.
(4) A written denial of the claim.

A claimant includes an insured, a beneficiary of life or annuity contract, a health care provider, or a health care facility that is responsible for directly making the claim with an insurer, HMO, service corporation, or MEWA. With respect to a claim under an accident, health, or disability policy, if the acknowledgement sent to the claimant indicates that the claim remains under investigation, within 45 days after receipt by the insurer of the initial claim, the insurer shall send a claim status report to the insured and every 45 days thereafter until the claim is paid or denied. The report shall give details sufficient for the insured to understand why processing of the claim has not been completed and whether the insurer needs additional information to process the claim. If the claim acknowledgement includes information about why processing of the claim has not been completed and indicates whether additional information is needed, it may satisfy the requirement for the initial claim status report. This subsection does not apply to HMOs, service corporations, MEWAs or insurers subject to G.S. 58-3-225."

PART XIII. HEALTH BENEFIT PLAN TRAVEL EXPENSES COVERAGE

SECTION 13. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-3-270. Insurance coverage for travel expenses associated with obtaining care.

(a) As used in this section, the terms "health benefit plan" and "insurer" have the meaning as found in G.S. 58-3-167.

(b) Each health benefit plan shall provide coverage for reasonable transportation, lodging, and boarding expenses incurred by a covered person to access covered health care services when the insurer, through its referral or network contracting arrangements, requires the covered person to travel more than 250 miles from the covered person's residence to obtain those covered health care services from a network provider.

(c) The coverage specified by this section is limited to transportation, lodging and boarding expenses incurred by a covered person when required by the health plan to travel to access covered health care services as provided in subsection (b) of this section when those health care services are not also available from a network provider who is located within 250 miles of the covered person's residence.

(d) The coverage required by this section shall be subject to plan requirements including any overall health care benefit plan aggregate limitations and shall last for the duration of the health care benefit plan's coverage of the treatment subject to this section. An insurer may utilize a per diem limit for the expenses specified in subsection (c) of this section as long as the limit reflects the high-low per diem method as annually published by the Internal Revenue Service or the Domestic Per Diem Rate as published annually by the federal General Services Administration in the area where the health care services are being obtained. All travel, lodging, and boarding expenses in excess of the insurer's per diem or the health benefit plan's aggregate limits shall be the responsibility of the covered person.

(e) An insurer may require prior approval of all expenses subject to this section.

(f) The coverage required by this section shall apply only to those travel, lodging, and boarding expenses incurred by the covered person accessing covered health care services in accordance with this section. If the covered person accessing covered health care services in accordance with this section is a minor, the health benefit plan shall also cover the expenses specified in subsection (c) of this section for a parent or guardian who accompanies the minor."

PART XIV. CREDIT INSURANCE AMENDMENTS

SECTION 14. G.S. 58-57-5 is amended by adding a new subdivision to read:

"(5a) "Critical period coverage" means insurance coverage for which benefits are limited to a stated number of payments or the payments end with the expiration of the policy, whichever is less."

SECTION 14.1. G.S. 58-57-50(b) reads as rewritten:

"(b) The refund of premiums for decreasing term credit life insurance shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy. The refund of premiums for ~~decreasing term credit life insurance in transactions of 60 months duration or less and the refund of premiums for~~ single interest credit property insurance and single interest physical damage insurance shall be

equal to the amount computed by the sum of digits formula known as the "Rule of 78." ~~The refund of premiums for decreasing term credit life insurance in transactions of more than 60 months duration shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy.~~ The refund of premiums for level term credit life insurance and dual interest credit property insurance and dual interest physical damage insurance shall be equal to the pro rata unearned gross premiums."

SECTION 14.2. G.S. 58-57-55 reads as rewritten:

"**§ 58-57-55. Issuance of policies.**

All policies of credit life insurance and credit accident and health insurance shall be issued only by an insurer authorized to do business in this State and shall be issued only through holders of licenses or authorizations issued by the Commissioner. ~~All~~ With the exception of credit insurance issued in accordance with G.S. 58-57-105, all policies of credit life insurance and credit accident and health insurance shall be delivered or issued for delivery in this ~~State only by an insurer authorized to do an insurance business therein, and shall be issued only through holders of licenses or authorizations issued by the Commissioner.~~ State. The enrollment of debtors under a group policy issued to a creditor and authorized under this Article shall not constitute the issuance of a policy of insurance."

SECTION 14.3. G.S. 58-57-60 is amended by adding a new subsection to read:

"(d) A claim acknowledgement shall be sent to the claimant within 30 days after receiving written or electronic notice of the claim. Acknowledgement shall include the following:

(1) A statement made to the insured or the claimant advising that the claim is being investigated.

(2) Payment of the claim.

(3) A bona fide written offer of settlement.

(4) A written denial of the claim."

SECTION 14.4. G.S. 58-57-110 reads as rewritten:

"**§ 58-57-110. Credit unemployment insurance rate standards; policy provisions.**

(a) Each year the Commissioner shall prescribe a minimum incurred loss ratio standard requirement to develop a premium rate reasonable in relation to the benefits provided by credit unemployment insurance coverage. The following requirements must be met:

(1) Coverage is provided or offered, with or without underwriting, to all debtors regardless of age who are working for salary, wages, or other employment income for at least 30 hours per week and have done so for 12 consecutive months;

(2) Coverage sets forth a definition of involuntary unemployment as a loss of employment income that may include, but is not limited to, loss caused by layoff, general strike, termination of employment, or lockout;

(3) Coverage does not contain any exclusion except: debts with irregular monthly payments; voluntary forfeiture of salary, wages, or other

employment income; resignation; retirement; sickness, disease, or normal pregnancy; or loss of income due to termination as a result of willful misconduct that is a violation of some established, definite rule of conduct, a forbidden act, or willful dereliction of duty, or criminal ~~misconduct.~~misconduct;

(4) As long as there is no required time period limitation for registration, the insured may be required to register with the State unemployment office in order to qualify for benefit payments under the credit unemployment coverage. Qualification for State unemployment benefits shall not be required in order to qualify for benefit payments under the credit unemployment coverage.

(b) The Commissioner may approve other policy provisions and coverages consistent with the purposes of unemployment coverage.

(c) Joint coverage rates for credit unemployment insurance shall be one and two-thirds (1 2/3) times the approved single rate of coverage.

(d) The refund provision for credit unemployment insurance shall be equal to the pro rata unearned gross premium."

PART XV. EFFECT OF HEADINGS, SEVERABILITY, AND EFFECTIVE DATES

SECTION 15. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SECTION 15.1. If any section or provision of this act is declared unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional, preempted, or otherwise invalid.

SECTION 15.2. Sections 1 through 8 and Sections 9, 9.1, 13, 14, 14.1, 14.2, 14.3, and 14.4 of this act become effective January 1, 2004, and apply to policies or certificates issued or renewed on or after that date. The remainder of this act is effective when it becomes law and applies to policies or certificates issued or renewed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Wednesday, June 11, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **70** Pender Subdivision Regulation.

Draft Number:	PCS 45159
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 70

Short Title:	Pender Subdivision Regulation.	(Local)
Sponsors:	Representative Justice.	
Referred to:	Local Government I.	

February 25, 2003

A BILL TO BE ENTITLED

AN ACT TO REPEAL A LOCAL ACT SO THAT THE GENERAL LAW ON DEFINITION OF A SUBDIVISION APPLIES IN PENDER COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 204 of the 1991 Session Laws (as amended by Section 36 of Chapter 761 of the 1991 Session Laws) is repealed.

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 70:
Pender Subdivision Regulation.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Justice
Date:	June 10, 2003	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute H70-CSRU-50		

SUMMARY: ***The Proposed Committee Substitute for House Bill 70 repeals a local act defining 'subdivision' as it applies to land use planning in Pender County, thereby making the general law definition applicable to Pender County.***

CURRENT GENERAL LAW: For the purposes of land use planning, G.S. 153A-335 defines "subdivision" as the division of a tract of land into two or more lots, building sites, or other divisions for the purpose of sale or building development; but specifically excludes:

1. The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased.
2. The division of land into parcels greater than 10 acres.
3. The public acquisition of strips of land for widening or opening streets.
4. The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots.

CURRENT LOCAL LAW: In 1991, the General Assembly enacted a local act for Pender County defining 'subdivision' as "all divisions of a tract or parcel of land into two or more lots, building sites or other divisions for the purpose of sale or building development (whether immediate or future) that requires the dedication of a new road." The local act further made seven specific exclusions to the definition:

1. The combination or recombination of all or any portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its zoning and subdivision ordinances.
2. The public acquisition by purchase or gift of strips of land for widening or opening streets.
3. The conveyance of land to heirs for the purpose of dividing real estate among said heirs, as described in the North Carolina Court of Appeals decision in *Claude A. Williamson, Jr. and wife, Angela C. Williamson vs. Dorothy A. Avant*, 21 N. C. App. 211.
4. The division of land into two or more parcels or lots for the purpose of conveying the resultant parcels or lots to a grantee or grantees who are in any degree of lineal kinship to the grantor, or to a grantee or grantees who are within four degrees of collateral kinship to the grantor. Degrees of kinship would be computed in accordance with G.S. 104A-1. All parcels or lots so conveyed must meet the size requirements and the access requirements of the County in its zoning ordinance.
5. The division of land into parcels of five acres or more, where the grantor records a right-of-way agreement prior to or simultaneously with the recording of the deed. The agreement must provide for access to the parcel by right-of-way width equal to or exceeding, and minimum curve centerline radii equal to or exceeding, the North

Carolina Department of Transportation Subdivision Road requirements. The agreement must provide for construction and maintenance of the road.

6. The division of land for cemetery lots or burial plots.
7. Any sale, conveyance, or exchange, (including by court order) between tenants in common or joint tenants, when such sale, conveyance, or exchange is solely for the purpose of effecting a division of the lands between such tenants in common or joint tenants, and to set off their interest in severalty, and when such purpose is not for building development (whether immediate or future) or for sale to the general public. Tenants in common and joint tenants shall include all persons owning undivided interests in real property by virtue of conveyance by deed, by will, or by inheritance. S.L. 1991-204, as amended by S.L. 1991-761, s.36

BILL ANALYSIS:

The bill would repeal the local act, and make the general law defining subdivision applicable in Pender County.

EFFECTIVE DATE: The bill would become effective January 1, 2004 and would apply to subdivisions given final approval on or after that date.

This summary was substantially contributed to by Erika Churchill, Counsel to the House Local Government I Committee.

H70-SMRU-00

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 70
PROPOSED SENATE COMMITTEE SUBSTITUTE H70-CSRU-47 [v.1]

6/6/2003 4:39:34 PM

Short Title: Pender Subdivision Regulation. (Local)

Sponsors:

Referred to:

February 25, 2003

A BILL TO BE ENTITLED

AN ACT TO REPEAL A LOCAL ACT SO THAT THE GENERAL LAW ON DEFINITION OF A SUBDIVISION APPLIES IN PENDER COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 204 of the 1991 Session Laws (as amended by Section 36 of Chapter 761 of the 1991 Session Laws) is repealed.

SECTION 2. This act becomes effective January 1, 2004, and applies to subdivisions given final approval on or after the effective date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 70
PROPOSED SENATE COMMITTEE SUBSTITUTE H70-PCS45159-RU-47

Short Title: Pender Subdivision Regulation. (Local)

Sponsors:

Referred to:

February 25, 2003

A BILL TO BE ENTITLED

AN ACT TO REPEAL A LOCAL ACT SO THAT THE GENERAL LAW ON DEFINITION OF A SUBDIVISION APPLIES IN PENDER COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 204 of the 1991 Session Laws (as amended by Section 36 of Chapter 761 of the 1991 Session Laws) is repealed.

SECTION 2. This act becomes effective January 1, 2004, and applies to subdivisions given final approval on or after that date.

Senate Commerce Committee
Tuesday, June 10, 2003, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 70	Pender Subdivision Regulation.	Representative Justice
HB 339	Life and Health Insurance Omnibus.-AB	Representative Wright
HB 1023	Underinsured Motorist Coverage.	Representative Goodwin
HB 1213	Regulate Deferred Deposit.	Representative Grady Representative Culpepper, III

Presentations

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, June 10, 2003 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, June 10, 2003, in Room 1027 of the Legislative Building. Nineteen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced the pages: Anna Lee Barnes of Kill Devil Hills, sponsored by Senator Marc Basnight; and Molly Rawls Harden of Windsor, sponsored by Senator Basnight.

Senator Soles introduced Representative Carolyn Justice to explain HB 70, Pender Subdivision Regulation. Senator Soles spoke on the bill. Senator Tony Rand moved the adoption of a committee substitute. The motion carried. Senator Patrick Ballantine moved an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Senator Soles introduced Representative Bill Culpepper to explain HB 1213, Regulate Deferred Deposit. Senator David Hoyle moved the adoption of an amendment (Amendment 1). Senator Kay Hagan moved the adoption of a substitute amendment (Amendment 2). Due to time constraints, no vote was taken on the bill. Senator Soles announced there would be a separate meeting on the bill at a time to be announced.

The committee did not consider HB 339, Life and Health Insurance Omnibus-AB, or HB 1023, Underinsured Motorist Coverage.

The meeting adjourned at 11:55 a.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 1213

Committee Substitute Favorable 4/29/03
Third Edition Engrossed 5/1/03

Short Title: Regulate Deferred Deposit. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO REGULATE DEFERRED DEPOSIT TRANSACTIONS AND TO PROVIDE ADDITIONAL CONSUMER DISCLOSURES AND PROTECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-275 reads as rewritten:

"**§ 53-275. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the term:

(1) "Cashing" means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

(2) "Check-cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration.

(3) "Commission" means the State Banking Commission.

(4) "Commissioner" means the Commissioner of Banks.

(4a) "Deferred deposit transaction" means a check-cashing or similar loan transaction in which a person pays a cash advance to a consumer in return for a check dated on the date it was written and agrees to hold the check for a period of days prior to deposit or presentment, or accepts a postdated check and agrees to hold the check for deposit or presentment at least until the date written on the check. The term shall also include any such arrangement in which a person pays a cash advance in return for an authorization from a consumer for a draft or electronic debit rather than a check.

(4b) "Lender" means the following:

a. Any person or entity that offers or makes a deferred deposit transaction, arranges a deferred deposit transaction for a third party, or acts as an agent for a third party, regardless of whether

the third party is exempt from licensing under this Article or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party.

b. Notwithstanding the foregoing, a state or federally chartered bank, savings and loan association, credit union, or supervised lender shall not be considered a lender for purposes of this Article and shall be specifically exempt from provisions of this Article so long as all of the following are satisfied:

1. It initially advances the loan proceeds to the borrower;
2. It does not sell, assign, or transfer in the aggregate a preponderant economic interest in the deferred deposit transactions to an arranger, agent, or assistant, or an affiliate or subsidiary of the state or federally chartered bank, savings and loan association, credit union, or supervised lender, unless selling, assigning or transferring a preponderant economic interest is permitted by the primary regulator of the state or federally chartered bank, savings and loan association, credit union, or supervised lender; and
3. It develops the deferred deposit transaction program on its own.

c. If a lender offers, arranges, acts as an agent for, or assists a state or federally chartered bank, savings and loan association, credit union, or supervised lender in any way in the making of a deferred deposit transaction and the state or federally chartered bank, savings and loan association, credit union, or supervised lender meets the standards set forth in sub-subdivision b. of this subdivision, the lender shall comply with all other provisions of this Article to the extent they are not preempted by other state or federal laws.

(5) "Licensee" means a person or entity licensed to engage in a check-cashing business under this Article.

(5a) "Loan amount" means the amount financed as defined in Regulation 'Z' of the federal Truth-in-Lending Act (12 C.F.R. § 226.18(b).

(6) "Person" means an individual, partnership, association, or corporation."

SECTION 2. G.S. 53-276 reads as rewritten:

"**§ 53-276. License required.**

No person or other entity may engage in the business of cashing checks, drafts, or money orders for ~~consideration~~ consideration, nor engage in the business of making deferred deposit transactions without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a check or other currency equivalent instead of currency when cashing payment instruments."

SECTION 3. Article 22 of Chapter 53 of the General Statutes is amended by adding the following new sections to read:

"**§ 53-281.1. Deferred deposit transactions permitted.**

Lenders may make deferred deposit transactions pursuant to the following requirements:

(1) The face amount of the deferred deposit check may include a fee but the principal loan amount shall not exceed three hundred dollars ($300.00).

(2) Each deferred deposit check cashed by a lender shall be deemed to be a loan and shall be documented by a written agreement as provided in G.S. 53-281.2.

(3) A lender shall not directly or indirectly charge a fee or other consideration in excess of fifteen percent (15%) of the loan amount, provided the maximum fee charged to a borrower for entering into a deferred deposit transaction shall not exceed forty dollars ($40.00).

(4) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same lender or any affiliate of the lender. A lender shall not, for any consideration, renew or otherwise extend any deferred deposit check or withhold the check from deposit for any period beyond the time set forth in the written agreement, except as allowed under G.S. 53-281.4.

"**§ 53-281.2. Written agreement and disclosures required for deferred deposit transactions.**

(a) Each deferred deposit transaction shall be documented by a written agreement signed by the borrower and the lender. A legible copy of the agreement shall be provided to the borrower.

(b) The written agreement shall contain:

(1) The name and address of the borrower.

(2) The name, local street address, and telephone number of the lender.

(3) The transaction date, which shall be prominently labeled.

(4) The loan amount as defined in G.S. 53-275(5a).

(5) The amount of any fees charged, expressed as both a dollar amount and as an effective annual percentage rate (APR).

(6) The maturity date, which shall be no less than 14 days nor more than 60 days after the transaction date.

(7) The following notices immediately above the borrower's signature line in at least ten-point type: **THIS TRANSACTION IS NOT MEANT TO MEET LONG-TERM FINANCIAL NEEDS AND SHOULD BE USED ONLY TO MEET SHORT-TERM CASH NEEDS. YOU HAVE THE RIGHT TO CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. ON THE NEXT BUSINESS DAY AFTER THE TRANSACTION DATE SHOWN ABOVE. TO CANCEL YOU MUST RETURN ALL OF THE CASH**

PROCEEDS TO THE LENDER. THE LENDER WILL REFUND TO YOU ALL FEES IF YOU CANCEL THIS TRANSACTION.

(c) The written agreement shall be accompanied by a separate paper which contains all disclosures required by the federal Truth-in-Lending Act (12 U.S.C. § 1601, et seq.,) and the federal Reserve Board Regulation 'Z' and the consumer education information. The consumer education information shall be prepared by the Commissioner and shall inform the consumer of matters such as the complaint process through the Commissioner's office, the relative cost of short-term consumer loans, the availability of other forms of credit, the right of the customer to elect a repayment plan, and any other matters the Commissioner thinks are necessary or beneficial to consumers.

(d) The written agreement shall not contain any of the following provisions:

(1) A hold harmless clause.

(2) A confession of judgment clause.

(3) A mandatory arbitration clause that does not comply with the standards set forth in the statement of principles of the National Consumer Dispute Advisory Committee of the American Arbitration Association in effect on the effective date of this Act.

(4) Any provision in which the borrower agrees not to assert a claim or defense arising out of the contract.

(5) Any waiver by the borrower of any provision of this Article.

(e) In addition to providing the written agreement, prior to entering a deferred deposit transaction, the lender shall verbally inform the borrower of the following:

(1) The borrower has the right to cancel the transaction and how the borrower can exercise this right.

(2) The terms of the transaction including the loan amount, the amount of any fees charged, expressed both as a dollar amount and as an annual percentage rate.

(3) The right of the borrower to elect a mandatory repayment plan and how the borrower can exercise this right.

"**§ 53-281.3. Deferred deposit transactions limited.**

(a) A lender shall not knowingly enter into a deferred deposit transaction with a borrower whom the lender knows has other transactions in the aggregate exceeding the principal amount of three hundred dollars ($300.00) or knows would exceed three transactions regardless of value. It shall be mandatory for the lender to meet both of the following conditions:

(1) The borrower signs a certification in substantially the following form: **I UNDERSTAND THAT NORTH CAROLINA LAW PROHIBITS A PERSON FROM HAVING MORE THAN $300.00 IN DEFERRED DEPOSIT CHECKS OUTSTANDING AT ONE TIME. I OWE THE FOLLOWING DEFERRED DEPOSIT AMOUNTS AND NO OTHERS:** (Write the amount you owe and the names of the licensees or write 'NONE'). This certification shall not constitute the basis of a criminal prosecution under G.S. 14-100.

(2) The lender shall verify the accuracy of this certification by:

a. A query of all of the lender's own records, and

b. A query of a subprime credit reporting service.

(b) Within 90 days after the effective date of this Act, each lender shall subscribe to a subprime credit reporting service, designated by the Commissioner, which has the capability of verifying the number and loan amounts of outstanding deferred deposit transactions entered into by any borrower with any lender licensed under this Act. Within 30 days of the effective date of this Act, the Commissioner shall issue a "Request for Proposal" from subprime credit reporting services capable of verifying the information described in this subsection and within 45 days of the effective date of this Act, the Commissioner shall designate that service which is capable of providing such verification and charges the lowest cost per query.

(c) Each lender shall report to the subprime credit reporting service the information necessary for the subprime credit reporting service to verify the number and loan amounts of outstanding deferred deposit transactions entered into by borrowers with lenders licensed under this Article.

(d) A lender must pay the proceeds from a deferred deposit transaction to the borrower in the form of a check from the lender. Upon the borrower's request, the lender may cash the lender's check if the lender has cash available to do so. The borrower shall not be charged an additional finance charge or fee for cashing the lender's check.

(e) No lender shall enter into a deferred deposit transaction with a borrower who has elected a mandatory repayment plan as provided in G.S. 53-281.4 on two separate occasions within a calendar year unless the borrower obtains counseling from a credit counseling service approved by the Commissioner.

"**§ 53-281.4. Mandatory repayment plan.**

If the borrower elects and so informs the lender at any time prior to the maturity date of the deferred deposit transaction, the borrower may declare an inability to repay and the lender shall accept a mandatory repayment plan with the following terms:

(1) The borrower and the lender sign a repayment plan agreement providing for four equal installments due on each of the borrower's next four paydays, with at least 14 days between the installments.

(2) The borrower agrees not to enter into any additional deferred deposit transactions during the term of the repayment plan.

(3) Upon completion of the plan, the lender shall report the borrower's positive payment history to consumer credit reporting agencies.

(4) Upon completion of the plan, the borrower is prohibited from entering into any deferred deposit transactions with any lender for at least one pay period.

(5) The lender may collect a fifteen dollar ($15.00) processing charge for each repayment plan.

"**§ 53-281.5. Prohibited practices regarding deferred deposit transactions.**

In addition to the prohibited practices under G.S. 53-283, the following are prohibited regarding deferred deposit transactions:

(1) Taking or attempting to take any security other than the borrower's instrument.

(2) Taking or attempting to take more than a single check or other instrument from the borrower in connection with a single transaction.

(3) Selling, offering, or soliciting any application for credit insurance in connection with a transaction.

(4) Tying the transaction to any other transaction, offer, or obligation of the borrower.

(5) Failing to comply with the Commissioner's request for assistance in resolving a complaint.

(6) Using or threatening to use criminal process to collect a dishonored check, unless fraud is involved.

(7) Assigning or selling to another lender an instrument taken in connection with a deferred deposit transaction unless the instrument bears the following endorsement: **THIS INSTRUMENT WAS GIVEN BY ITS MAKER TO SECURE A DEFERRED DEPOSIT TRANSACTION UNDER G.S. 53-281.1 AND THE ASSIGNEE IS DEEMED TO HAVE KNOWLEDGE OF AND SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THE LOAN AGREEMENT BETWEEN THE BORROWER AND THE ORIGINAL LENDER.**

(8) Failing to report accurately and promptly a borrower's positive repayment activity under G.S. 53-281.4 to credit reporting agencies.

(9) Failing to collect and provide information regarding the number, total, and average transaction amounts and any other information the Commissioner may request."

SECTION 4. G. S. 53-286 reads as rewritten:

"The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties may also be imposed upon persons acting on behalf of a licensee or any other person who violates this Article. Civil penalties shall not exceed ~~one thousand dollars ($1,000)~~ ten thousand dollars ($10,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers. The imposition or pendency of any order or penalty by the Commissioner shall not limit the right of any customer to pursue any available civil remedies."

SECTION 5. This act is effective when it becomes law.

HOUSE BILL 1213:
Regulate Deferred Deposit.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Reps. Culpepper and Grady
Date:	June 10, 2003	**Summary by:**	Karen Cochrane Brown
Version:	Third Edition		Committee Co-Counsel

SUMMARY: ***House Bill 1213 reauthorizes regulation of deferred deposit transactions. Deferred or delayed deposit transactions were previously authorized under provisions of the Check Casher Act. Those provisions expired on August 31, 2001. This bill would reauthorize these transactions and also provide additional consumer disclosures and protections that were not in the expired law.***

CURRENT LAW: Article 22 of Chapter 53 of the General Statutes requires that certain persons who cash checks for a fee must be licensed as a check cashing business. Prior to August 31, 2001, G.S. 53-281 allowed licensed check cashing businesses to advance cash in amounts up to $300.00, for postdated or delayed deposit checks. The fee for this service was 15% of the face amount of the check. The deposit could be delayed for up to 31 days. G.S. 53-281 expired on August 31, 2001, and since that time North Carolina law has not permitted these so-called "payday loans". However, several businesses have continued to operate by entering into agency agreements with national banks to fund the loans. North Carolina is preempted by federal law from regulating national banks.

BILL ANALYSIS:

Section 1. – Adds several new definitions to the Check Casher Act to clarify provisions relating to the renewed authorization for deferred deposit transactions. One important addition is the term "lender" which includes any person or entity that offers or makes a deferred deposit loan or acts as an agent for a third party that makes such loans even if the third party is exempt from the licensing requirements or whether approval, acceptance or ratification by a third party is required. However, a state or federally chartered depository institution is not considered a lender if:

- It initially advances the loan to the borrower;
- It does not sell or transfer a preponderant economic interest in the transaction to an agent, affiliate, or subsidiary, unless selling, assigning or transferring a preponderant economic interest is permitted by the primary regulator of the depository institution; and
- It developed the deferred deposit transaction program on its own.

If a lender acts as agent for a depository institution in any way in making the deferred deposit transaction and the depository institution meets the three requirements for exemption, the lender must comply with all provision of this Article unless preempted by other law.

Section 2. – Adds a licensing requirement for businesses engaging in making deferred deposit transactions. The Commissioner of Banks is charged with issuing licenses and administering the Article.

Section 3. – Adds several new sections to Article 22, which reauthorize and regulate deferred deposit transactions. These transactions are permitted subject to the following requirements:

- Principal amount of the loan may not exceed $300.00;
- Lender may not charge a fee in excess of 15% of the loan amount or $40.00;
- Loan may not be repaid by the proceeds of another deferred deposit loan;
- Loan must be documented by a written agreement signed by the borrower and the lender;
- The amount of the fees charged must be expressed both as a dollar amount and as an effective annual percentage rate (APR).
- The maturity date may not be less than fourteen days nor more than sixty days from the transaction date;
- A notice advising the borrower of the right to cancel the transaction must be included in 10-point type;
- The agreement must be accompanied by a Regulation 'Z' disclosure, as provided by the federal Truth in Lending Act.
- The agreement may not contain a hold harmless clause, a confession of judgment clause, a mandatory arbitration clause that does not comply with standards of the American Arbitration Association, a provision in which the borrower agrees not to assert a claim or defense, or a provision in which the borrower waives any provision of the Article;
- Lenders must also verbally inform borrowers of their right to cancel the transaction, the specific terms of the transaction, and the right to elect a mandatory repayment plan, and how to exercise the right.
- Lenders may not enter into transactions with borrowers who have outstanding loans in excess of $300.00;
- Borrower must certify he has no outstanding loans and the lender must verify by use of a subprime credit reporting service.
- The Commissioner must solicit proposals and select a credit reporting service capable of providing the service and all lenders must subscribe to it.
- Lender may not enter transaction with a borrower who has elected a mandatory repayment plan twice in a calendar year unless the borrower obtains credit counseling.
- Borrowers who cannot repay may elect to enter into a mandatory repayment plan providing for four equal installments due on the borrower's next four paydays, with at least 14 days between installments. The lender may collect a $15.00 processing charge for each repayment plan;
- Prohibited practices related to deferred deposit transactions include: taking security other than the borrower's check, taking more than one check in connection with a single transaction, selling or offering credit insurance, tying the transaction to any other transaction, using or threatening to use criminal process, unless fraud is involved, assigning or selling the check unless the required endorsement is attached, failing to report positive repayment activity to credit reporting agencies, failing to assist or provide information to the Commissioner of Banks.

Section 4. – Increases the maximum amount of civil penalties that may be imposed for violation of the Act from $1,000.00 to $10,000.00 per violation.

The act would become effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1213

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H1213-ARU-37 [v.2]

Date 6-10 ,2003

Comm. Sub. [YES]
Amends Title [NO]
H1213-CSRO-25

Senator Hoyle

moves to amend the bill on page 1, line 25, through page 2, line 30,
by rewriting the lines to read:

"(4b) 'Lender' means any person or entity that offers or makes a deferred deposit transaction, arranges a deferred deposit transaction for a third party, or acts as an agent for a third party, regardless of whether the third party is exempt from licensing under this Article or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party. Notwithstanding that a bank, savings institution, credit union, or farm credit system may be exempted by federal law from this Article's provisions related to interest rate, finance charges, and licensure, all other applicable provisions of this Article apply to both a deferred deposit transaction and a deferred deposit lender."; and

on page 5, lines 3 through 21, by rewriting the lines to read:

"b. A query of the database created pursuant to G.S. 53-281.6.

(b) A lender must pay the proceeds from a deferred deposit transaction to the borrower in the form of a check from the lender. Upon the borrower's request, the lender may cash the lender's check if the lender has cash available to do so. The borrower shall not be charged an additional finance charge or fee for cashing the lender's check.

(c) No lender shall enter into a deferred deposit transaction with a borrower who"; and

on page 6, line 37,
by rewriting the line to read:

"**SECTION 5.** Article 22 of Chapter 53 of the General Statues is amended by adding the following new section to read:

"**§ 53-281.6. Database for reporting of deferred deposit loans.**

(a) On or before October 1, 2003, the Commissioner shall designate a third-party provider to develop, implement and maintain a private database, with real-time access through an Internet connection, in accordance with the provisions of this section. The database must be accessible to the Commissioner and the lender to verify the aggregate amount and total number of deferred deposit loan transactions outstanding for a particular borrower. The Commissioner shall insure that the third-party provider operates the database in accordance with the provision of this section.

The database must be able to do all of the following:

(1) Validate a borrower's social security number and must report to the lender if any such social security number is invalid, has been issued within the past five years prior to the date of submission, or represents a deceased person. The database provider must maintain access to the database 24 hours a day, seven (7) days a week.

(2) Validate whether a new deferred deposit loan may be extended to the borrower based on the allowable number of loans and aggregate loan amount pursuant to this Article.

(3) Provide additional information to the lender, at the option and sole expense of the lender, that can be used to render a more informed risk assessment decision based on other information that may be available on the borrower that would be an indication of the borrower's ability to pay. This should include all of the following:

a. Past performance data on deferred deposit loans the borrower has secured within or without of the State.

b. Inquiry information from lenders outside the State that would indicate loans outside the State that may have been secured by the borrower.

c. Access to other performance information about the borrower in relation to other sub-prime industries.

d. Information necessary to ensure lender compliance with federal OFAC requirements.

In any event, the Commissioner shall maintain investigative and enforcement responsibility for violations of this section and shall not delegate this responsibility to any third-party provider.

(b) The designated third-party provider may impose a verification fee not to exceed one dollar ($1.00) per transaction for access to data required to validate whether a deferred deposit loan may be extended to the customer based on the allowable number of loans and aggregate loan amount pursuant to this Article.

(c) The lender may impose a verification fee not to exceed one dollar ($1.00) per transaction, or the actual amount charged to the lender, whichever is less, for data required to be submitted by a lender.

Lenders may rely on the information contained in the database as accurate and are not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database.

(d) In no event shall the total of outstanding checks have an aggregate principal amount from any one borrower exceeding three hundred dollars ($300.00). No single lender shall have at any given time, with any one borrower, a total of outstanding checks with an aggregate face value of more than three hundred forty dollars ($340.00), equaling the total amount loaned plus finance charge.

(e) A lender may not enter into any loan transaction with a person who has outstanding loan transactions, the principal amount of which in the aggregate exceed three hundred dollars ($300.00). The lender must verify the following information:

(1) The lender shall maintain an intra-company database and shall verify the total number of and aggregate dollar amount of all outstanding deferred deposit loan transactions between a particular person and that lender or an affiliate of the lender.

(2) Upon full implementation of the statewide common database, the lender shall access the database established pursuant to subsection (a) of this section and shall verify whether any other lenders have outstanding loan transactions with that person and whether the total dollar amount of all such outstanding loan transactions in the aggregate exceed three hundred dollars ($300.00). In addition, the lender, at its option, shall leverage any other additional data that may be available on the borrower, as outlined in subdivision (3) of

subsection (a) of this section, to render a more complete decision on the borrower's ability to repay the deferred deposit loan.

(f) Before entering into each deferred deposit loan, a lender shall submit the required borrower data in the format the Commissioner shall reasonably require, including the borrower's name, social security number, address, drivers license number, amount of the transaction, borrower check number, date of the transaction, maturity date of the transaction, and any other information reasonably required by the Commissioner.

(g) Prior to implementation of the database or during times when the database is unavailable to lenders due to technical problems, a lender may rely upon the written verification of the borrower in a statement provided in substantially the following form in at least ten-point type as follows:

INCLUDING THE LOAN TRANSACTION IN WHICH I AM ABOUT TO ENTER, I DO NOT HAVE OUTSTANDING DEFERRED DEPOSIT LOANS, WITH AN AGGREGATE OUTSTANDING BALANCE EXCEEDING $300.00, WITH THIS OR OTHER LICENSED DEFERRED DEPOSIT LENDERS.

(h) Any deferred deposit loan that has been fully paid and satisfied, as defined in subsection (h), shall be designated as a closed transaction in the database immediately, but in no event later than 11:59 p.m. on the day the loan was fully paid and satisfied. Failure to report the loan as paid in a timely manner will result in an automatic civil administrative penalty of $100 for each day that the lender fails to indicate in the database that the loan has been paid. A lender shall not be subject to civil administrative penalties in the event updates to the database are not possible due to circumstances beyond lender's control, including but not limited to, the database experiencing temporarily technical problems.

(i) A deferred deposit transaction shall be considered a closed transaction at the time that any of the following have been done with the check:

(1) Redeemed by the customer by payment to the lender of the face amount of the check in cash.

(2) Exchanged by the lender for a cashier's check or cash from the borrower's financial institution.

(3) Deposited by the lender and the lender has evidence that the check has cleared.

(4) Collected by the lender or its agent through any civil remedy available under State law.

(5) Collected by means of a repayment plan agreed upon by the borrower and the lender or as the result of credit counseling where the lender has been paid the amount agreed upon by lender under the plan.

(j) Notwithstanding the provisions of subsection (h) of this section, the designated third-party provider shall automatically close any outstanding customer transaction five (5) days following the loan maturity date unless a lender reports to the database provider prior to that time that any of the following apply:

(1) The transaction remains open, due to the borrower's failure to make payment.

(2) The transaction is pending, due to the borrower's check or an electronic re-deposit being in the process of clearing the banking system.

(3) The transaction remains open, due to the borrower's check being returned to the lender for insufficient funds, closed accounts or stop payment order.

If a lender timely reports the status of a transaction as open or pending, the transaction shall remain an open transaction until fully paid and satisfied, as defined in subsection (k) of this section and reported as such by the lender. If a lender ceases offering deferred deposit loans, all open transactions with the lender shall automatically close sixty (60) days following the date the lender ceases offering deferred deposit loans, unless the lender reports to the designated third-party provider prior to the expiration of the sixty-day (60) period (i) those borrower transactions that remain open; and (ii) the specific reason each transaction remains open; and further provides to the Commissioner a reasonably acceptable plan which outlines how the lender will continue to update the database following the ceasing of it deferred deposit operations. If at any time the Commissioner reasonably determines that a lender who has ceased its deferred deposit operations is not updating the database in accordance with its approved plan, the Commissioner shall immediately close all remaining transactions attributable to the lender.

(k) Inquiries to the database by lenders shall only state that a person is eligible or ineligible for a new deferred presentment transaction together with a description of the

reason for the determination. Only information previously registered and recorded by the lender on the database shall be made available to the lender by the database or the Commissioner. Only the person seeking the deferred presentment transaction may make a direct inquiry to the designated third-party provider to request a more detailed explanation of a particular transaction that was the basis for the database's ineligibility determination. Any information regarding any person's transactional history is confidential pursuant to this section, shall not be subject to public inspection and is not a public record under Chapter 132 of the General Statutes.

(l) As used in this section, the following terms mean:

(1) Open transaction or open. – A deferred deposit transaction that has been registered and recorded in the database but not closed or pending.

(2) Pending transaction or pending. – An open transaction that is in the process of clearing the banking system.

(3) Closed transaction or closed. – A deferred deposit transaction that has been terminated as defined in subsection (i) of this section."

SECTION 6. This act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1213

AMENDMENT NO. #2
(to be filled in by
Principal Clerk)

H1213-ARU-32 [v.6]

Date 6-10 ,2003

Comm. Sub. [YES]
Amends Title [NO]
Third Edition

Senator Hagan

moves to amend the bill on moves to amend the bill on page 5, lines 3 through 21, by rewriting the lines to read:

"b. A query of the database created pursuant to G.S. 53-281.6.

(b) A lender must pay the proceeds from a deferred deposit transaction to the borrower in the form of a check from the lender. Upon the borrower's request, the lender may cash the lender's check if the lender has cash available to do so. The borrower shall not be charged an additional finance charge or fee for cashing the lender's check.

(c) No lender shall enter into a deferred deposit transaction with a borrower who"; and

on page 6, line 37,
by rewriting the line to read:

"SECTION 5. Article 22 of Chapter 53 of the General Statues is amended by adding the following new sections to read:

"**§ 53-281.6. Database for reporting of deferred deposit loans.**

(a) On or before October 1, 2003, the Commissioner shall implement a common database with real-time access through an Internet connection for all lenders that offer deferred deposit loans, as provided in this section. The Commissioner may contract with a private vendor. The database shall be accessible to the Commissioner and lenders to verify whether any deferred deposit loans are outstanding for a particular customer. Lenders shall submit the required data before entering into each deferred deposit loan, before accepting an installment payment, and upon the repayment of each deferred deposit loan in a format and with the identifying information required by the Commissioner, including the drawer's name, address, drivers license number, amount of the loan, date of the loan, the date and amount of all installment payments made, the

date that the loan is paid off, and any additional information required by the Commissioner. All individual borrower information provided under this section shall be maintained by the Commissioner as confidential to be used only for the purposes specified in this Article, shall not be subject to public inspection, and shall not be a public record under Chapter 132 of the General Statutes. Inquiries to the database by lenders shall only reveal whether the borrower is eligible or ineligible for a deferred deposit loan together with a description of the reason for the determination. Only information previously registered and recorded by the lender on the database shall be made available to the lender. Only the borrower seeking the deferred deposit loan may make a direct inquiry to the Commissioner to request a more detailed explanation of a particular loan that was the basis for the database's ineligibility determination. The Commissioner may impose a fee not to exceed one dollar ($1.00) per loan to access the database. A lender may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying in good faith on information contained in the database. The Commissioner may adopt procedures to administer and enforce the provisions of this section and to assure that the database is used by lenders in accordance with this section.

(b) The Commissioner of Banks shall compile an annual report by April 1 of each year, beginning with April 1, 2005, containing data regarding all deferred deposit loans made in the preceding year by lender and on an aggregate basis. Annual reports shall be made available to interested parties and the general public. The report shall include all information reported by lenders pursuant to G.S. 53-281.7. Consistent with North Carolina law, the report shall include nonidentifying borrower data from the preceding year, which is available from the database, including:

(1) The total number and dollar amount of deferred deposit loans made in the calendar year ending as of December 31 of the previous year.

(2) The total number and dollar amount of deferred deposit loans outstanding as of December 31 of the previous year.

(3) The minimum, maximum, and average dollar amount of payment devices whose deposits were deferred in the calendar year ending December 31 of the previous year.

(4) The average annual percentage rate and the average number of days a deposit of a payment device is deferred during the calendar year ending as of December 31 of the previous year.

(5) The number of loans made in the amount of one hundred dollars ($100.00) or less, the number of loans made in the amount of one hundred one dollars ($101.00) to two hundred dollars ($200.00), the number of loans in the amount of two hundred one dollars ($201.00) to three hundred dollars ($300.00), and the percentage of total loans made in each of these ranges.

(6) The number of loans that, upon repayment or deposit of a borrower's deferred deposit payment device, ended in the first week of the loan and the number of loans repaid or ending with the deposit of a borrower's deferred deposit payment device for successive weeks up to 14 weeks with the corresponding APR range for each week.

(7) The total dollar amount of fees collected for deferred deposit payment devices cashed.

(8) The total number and dollar amount of returned deferred deposit payment devices and fees charged for those returned deferred deposit payment devices.

(9) The total number of loans and the total dollar amount of the net charge-offs or write-offs and recoveries of the lender.

(10) The number and percentage of borrowers that used one, two, three, and four deferred deposit loans.

"**§ 53-281.7. Annual reports by lenders.**

The Commissioner shall require licensees to submit an annual report to the Commissioner on or before the last day of February for the preceding year disclosing:

(1) The resources, assets, and liabilities of the licensees at the beginning and the end of the period.

(2) The income, expense, gain, loss, and a reconciliation of surplus or net worth with the balance sheets, and the ratios of the profits to the assets reported.

(3) The total dollar amount and number of returned checks, checks recovered, and checks charged off during the calendar year ending as of December 31 of the previous year.

(4) A statement verifying that the licensee has not used the criminal process or caused the criminal process to be used in the collection of any deferred deposit loan during the calendar year ending as of December 31 of the previous year.

(5) Any additional data or information which is reasonably available to the licensee and which the Commissioner deems necessary to the performance of the Commissioner's oversight duties."

SECTION 6. G.S. 53-277(a) reads as rewritten:

"(a) This Article shall not apply to:

(1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any ~~state; and~~ state, except that the following provisions shall apply to deferred deposit transactions under G.S. 53-281.1 entered into directly between such an entity and a North Carolina resident to the extent these provisions apply to licensees:

a. G.S. 53-275;
b. G.S. 53-281.1;
c. G.S. 53-281.2;
d. G.S. 53-281.3;
e. G.S. 53-281.4;
f. G.S. 53-281.5;
g. G.S. 53-281.6;
h. G.S. 53-281.7;
i. G.S. 53-286.

(2) Any person or entity principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of a retail sale or service and not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a fee or other consideration, where not more than two dollars ($2.00) is charged for the service."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1213

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H1213-ARU-32 [v.6]

SECTION 7. This act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Senate Commerce Committee
Tuesday, June 10, 2003, after Session
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1213	Regulate Deferred Deposit.	Representative Grady Representative Culpepper, III

Presentations

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, June 10, 2003 after Session
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 4:25 p.m. on Tuesday, June 10, 2003, in Room 1027 of the Legislative Building. Twenty members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced the pages: Dori Chandler, sponsored by Senator Kay Hagan; and Molly Rawls Harden of Windsor, sponsored by Senator Basnight.

While we were waiting for Representative Bill Culpepper, Senator Soles introduced several persons who wanted to speak on HB 1213, Regulate Deferred Deposit:

- Mr. Willie Green, speaking on behalf of the check-cashers payday advance industry, and owner of a payday advance business with locations in Tennessee and North Carolina, told the members about the Commissioner of Banks report, and stated that the regulation that the Attorney General and others want to put on the industry will not let the businesses make their expenses
- Mr. Dave Darby, resident of Cabarrus County, a former operator of payday loan offices, asked that the General Assembly make payday lending available to independent operators, not just out-of-state financial institutions
- Mr. Mike Calhoun, speaking for Self-Help, based in Durham, strongly supports access to short-term credit that is fair to borrowers and profitable to lenders, but stated that HB 1213 would make the situation worse by specifically authorizing same day transactions
- Mr. Josh Stein, Senior Deputy Attorney General for Consumer Affairs, speaking on behalf of the Attorney General, spoke in opposition to the current version of HB 1213 as it allows lenders to trap borrowers in a cycle of debt (see attachment: letter from Attorney General Roy Cooper)
- Mr. Alfred Ripley, attorney with the North Carolina Justice and Community Development Center, asked that the committee not pass the bill in its current version because it would hurt thousands of North Carolinians, and said that 90 consumer members making up the Coalition for Responsible Lending do not support the bill. He brought several suggestions for improving the bill to the committee: (1) a waiting period between payday loans; (2) lower fees on transactions; and (3) anti-brokering provisions to stop the bank chartering loophole
- Mr. Richard Hatch, AARP North Carolina, asked that there be a requirement that all borrowers be told that there are repayment plans longer than 14 days; that an automatic repayment plan be linked with a 90-day minimum term; and that any additional $15 processing fee be eliminated
- Rev. G. I. Allison, representing Democracy North Carolina, brought a letter from Julian Bond, Chairman, NAACP National Board of Directors (see attachment)

- Mr. John Herrera, Board Chair of *Cooperativa Comunitaria,* (a Latino community credit union) spoke in opposition to the bill

Senator Soles thanked the speakers and drew the members' attention to Amendment 2 Senator Hagan's amendment) that was in consideration when the morning meeting adjourned.

The committee members asked for more information and clarification of the issues that had been presented at the meeting. Senator Soles announced that the committee would reconsider the bill at a meeting to be announced.

The meeting adjourned at 5:45 p.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 1213

Committee Substitute Favorable 4/29/03
Third Edition Engrossed 5/1/03

Short Title: Regulate Deferred Deposit. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO REGULATE DEFERRED DEPOSIT TRANSACTIONS AND TO PROVIDE ADDITIONAL CONSUMER DISCLOSURES AND PROTECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-275 reads as rewritten:

"**§ 53-275. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the term:

(1) "Cashing" means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

(2) "Check-cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration.

(3) "Commission" means the State Banking Commission.

(4) "Commissioner" means the Commissioner of Banks.

(4a) "Deferred deposit transaction" means a check-cashing or similar loan transaction in which a person pays a cash advance to a consumer in return for a check dated on the date it was written and agrees to hold the check for a period of days prior to deposit or presentment, or accepts a postdated check and agrees to hold the check for deposit or presentment at least until the date written on the check. The term shall also include any such arrangement in which a person pays a cash advance in return for an authorization from a consumer for a draft or electronic debit rather than a check.

(4b) "Lender" means the following:

a. Any person or entity that offers or makes a deferred deposit transaction, arranges a deferred deposit transaction for a third party, or acts as an agent for a third party, regardless of whether

the third party is exempt from licensing under this Article or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party.

b. Notwithstanding the foregoing, a state or federally chartered bank, savings and loan association, credit union, or supervised lender shall not be considered a lender for purposes of this Article and shall be specifically exempt from provisions of this Article so long as all of the following are satisfied:

1. It initially advances the loan proceeds to the borrower;
2. It does not sell, assign, or transfer in the aggregate a preponderant economic interest in the deferred deposit transactions to an arranger, agent, or assistant, or an affiliate or subsidiary of the state or federally chartered bank, savings and loan association, credit union, or supervised lender, unless selling, assigning or transferring a preponderant economic interest is permitted by the primary regulator of the state or federally chartered bank, savings and loan association, credit union, or supervised lender; and
3. It develops the deferred deposit transaction program on its own.

c. If a lender offers, arranges, acts as an agent for, or assists a state or federally chartered bank, savings and loan association, credit union, or supervised lender in any way in the making of a deferred deposit transaction and the state or federally chartered bank, savings and loan association, credit union, or supervised lender meets the standards set forth in sub-subdivision b. of this subdivision, the lender shall comply with all other provisions of this Article to the extent they are not preempted by other state or federal laws.

(5) "Licensee" means a person or entity licensed to engage in a check-cashing business under this Article.

(5a) "Loan amount" means the amount financed as defined in Regulation 'Z' of the federal Truth-in-Lending Act (12 C.F.R. § 226.18(b).

(6) "Person" means an individual, partnership, association, or corporation."

SECTION 2. G.S. 53-276 reads as rewritten:

"**§ 53-276. License required.**

No person or other entity may engage in the business of cashing checks, drafts, or money orders for ~~consideration~~ consideration, nor engage in the business of making deferred deposit transactions without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a check or other currency equivalent instead of currency when cashing payment instruments."

SECTION 3. Article 22 of Chapter 53 of the General Statutes is amended by adding the following new sections to read:

"**§ 53-281.1. Deferred deposit transactions permitted.**

Lenders may make deferred deposit transactions pursuant to the following requirements:

(1) The face amount of the deferred deposit check may include a fee but the principal loan amount shall not exceed three hundred dollars ($300.00).

(2) Each deferred deposit check cashed by a lender shall be deemed to be a loan and shall be documented by a written agreement as provided in G.S. 53-281.2.

(3) A lender shall not directly or indirectly charge a fee or other consideration in excess of fifteen percent (15%) of the loan amount, provided the maximum fee charged to a borrower for entering into a deferred deposit transaction shall not exceed forty dollars ($40.00).

(4) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same lender or any affiliate of the lender. A lender shall not, for any consideration, renew or otherwise extend any deferred deposit check or withhold the check from deposit for any period beyond the time set forth in the written agreement, except as allowed under G.S. 53-281.4.

"**§ 53-281.2. Written agreement and disclosures required for deferred deposit transactions.**

(a) Each deferred deposit transaction shall be documented by a written agreement signed by the borrower and the lender. A legible copy of the agreement shall be provided to the borrower.

(b) The written agreement shall contain:

(1) The name and address of the borrower.

(2) The name, local street address, and telephone number of the lender.

(3) The transaction date, which shall be prominently labeled.

(4) The loan amount as defined in G.S. 53-275(5a).

(5) The amount of any fees charged, expressed as both a dollar amount and as an effective annual percentage rate (APR).

(6) The maturity date, which shall be no less than 14 days nor more than 60 days after the transaction date.

(7) The following notices immediately above the borrower's signature line in at least ten-point type: **THIS TRANSACTION IS NOT MEANT TO MEET LONG-TERM FINANCIAL NEEDS AND SHOULD BE USED ONLY TO MEET SHORT-TERM CASH NEEDS. YOU HAVE THE RIGHT TO CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. ON THE NEXT BUSINESS DAY AFTER THE TRANSACTION DATE SHOWN ABOVE. TO CANCEL YOU MUST RETURN ALL OF THE CASH**

PROCEEDS TO THE LENDER. THE LENDER WILL REFUND TO YOU ALL FEES IF YOU CANCEL THIS TRANSACTION.

(c) The written agreement shall be accompanied by a separate paper which contains all disclosures required by the federal Truth-in-Lending Act (12 U.S.C. § 1601, et seq.,) and the federal Reserve Board Regulation 'Z' and the consumer education information. The consumer education information shall be prepared by the Commissioner and shall inform the consumer of matters such as the complaint process through the Commissioner's office, the relative cost of short-term consumer loans, the availability of other forms of credit, the right of the customer to elect a repayment plan, and any other matters the Commissioner thinks are necessary or beneficial to consumers.

(d) The written agreement shall not contain any of the following provisions:

(1) A hold harmless clause.

(2) A confession of judgment clause.

(3) A mandatory arbitration clause that does not comply with the standards set forth in the statement of principles of the National Consumer Dispute Advisory Committee of the American Arbitration Association in effect on the effective date of this Act.

(4) Any provision in which the borrower agrees not to assert a claim or defense arising out of the contract.

(5) Any waiver by the borrower of any provision of this Article.

(e) In addition to providing the written agreement, prior to entering a deferred deposit transaction, the lender shall verbally inform the borrower of the following:

(1) The borrower has the right to cancel the transaction and how the borrower can exercise this right.

(2) The terms of the transaction including the loan amount, the amount of any fees charged, expressed both as a dollar amount and as an annual percentage rate.

(3) The right of the borrower to elect a mandatory repayment plan and how the borrower can exercise this right.

"**§ 53-281.3. Deferred deposit transactions limited.**

(a) A lender shall not knowingly enter into a deferred deposit transaction with a borrower whom the lender knows has other transactions in the aggregate exceeding the principal amount of three hundred dollars ($300.00) or knows would exceed three transactions regardless of value. It shall be mandatory for the lender to meet both of the following conditions:

(1) The borrower signs a certification in substantially the following form: **I UNDERSTAND THAT NORTH CAROLINA LAW PROHIBITS A PERSON FROM HAVING MORE THAN $300.00 IN DEFERRED DEPOSIT CHECKS OUTSTANDING AT ONE TIME. I OWE THE FOLLOWING DEFERRED DEPOSIT AMOUNTS AND NO OTHERS:** (Write the amount you owe and the names of the licensees or write 'NONE'). This certification shall not constitute the basis of a criminal prosecution under G.S. 14-100.

(2) The lender shall verify the accuracy of this certification by:

a. A query of all of the lender's own records, and

b. A query of a subprime credit reporting service.

(b) Within 90 days after the effective date of this Act, each lender shall subscribe to a subprime credit reporting service, designated by the Commissioner, which has the capability of verifying the number and loan amounts of outstanding deferred deposit transactions entered into by any borrower with any lender licensed under this Act. Within 30 days of the effective date of this Act, the Commissioner shall issue a "Request for Proposal" from subprime credit reporting services capable of verifying the information described in this subsection and within 45 days of the effective date of this Act, the Commissioner shall designate that service which is capable of providing such verification and charges the lowest cost per query.

(c) Each lender shall report to the subprime credit reporting service the information necessary for the subprime credit reporting service to verify the number and loan amounts of outstanding deferred deposit transactions entered into by borrowers with lenders licensed under this Article.

(d) A lender must pay the proceeds from a deferred deposit transaction to the borrower in the form of a check from the lender. Upon the borrower's request, the lender may cash the lender's check if the lender has cash available to do so. The borrower shall not be charged an additional finance charge or fee for cashing the lender's check.

(e) No lender shall enter into a deferred deposit transaction with a borrower who has elected a mandatory repayment plan as provided in G.S. 53-281.4 on two separate occasions within a calendar year unless the borrower obtains counseling from a credit counseling service approved by the Commissioner.

"**§ 53-281.4. Mandatory repayment plan.**

If the borrower elects and so informs the lender at any time prior to the maturity date of the deferred deposit transaction, the borrower may declare an inability to repay and the lender shall accept a mandatory repayment plan with the following terms:

(1) The borrower and the lender sign a repayment plan agreement providing for four equal installments due on each of the borrower's next four paydays, with at least 14 days between the installments.

(2) The borrower agrees not to enter into any additional deferred deposit transactions during the term of the repayment plan.

(3) Upon completion of the plan, the lender shall report the borrower's positive payment history to consumer credit reporting agencies.

(4) Upon completion of the plan, the borrower is prohibited from entering into any deferred deposit transactions with any lender for at least one pay period.

(5) The lender may collect a fifteen dollar ($15.00) processing charge for each repayment plan.

"**§ 53-281.5. Prohibited practices regarding deferred deposit transactions.**

In addition to the prohibited practices under G.S. 53-283, the following are prohibited regarding deferred deposit transactions:

(1) Taking or attempting to take any security other than the borrower's instrument.

(2) Taking or attempting to take more than a single check or other instrument from the borrower in connection with a single transaction.

(3) Selling, offering, or soliciting any application for credit insurance in connection with a transaction.

(4) Tying the transaction to any other transaction, offer, or obligation of the borrower.

(5) Failing to comply with the Commissioner's request for assistance in resolving a complaint.

(6) Using or threatening to use criminal process to collect a dishonored check, unless fraud is involved.

(7) Assigning or selling to another lender an instrument taken in connection with a deferred deposit transaction unless the instrument bears the following endorsement: **THIS INSTRUMENT WAS GIVEN BY ITS MAKER TO SECURE A DEFERRED DEPOSIT TRANSACTION UNDER G.S. 53-281.1 AND THE ASSIGNEE IS DEEMED TO HAVE KNOWLEDGE OF AND SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THE LOAN AGREEMENT BETWEEN THE BORROWER AND THE ORIGINAL LENDER.**

(8) Failing to report accurately and promptly a borrower's positive repayment activity under G.S. 53-281.4 to credit reporting agencies.

(9) Failing to collect and provide information regarding the number, total, and average transaction amounts and any other information the Commissioner may request."

SECTION 4. G. S. 53-286 reads as rewritten:

"The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties may also be imposed upon persons acting on behalf of a licensee or any other person who violates this Article. Civil penalties shall not exceed ~~one thousand dollars ($1,000)~~ ten thousand dollars ($10,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers. The imposition or pendency of any order or penalty by the Commissioner shall not limit the right of any customer to pursue any available civil remedies."

SECTION 5. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1213

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1213-ARU-32 [v.6]

Date _____,2003

Comm. Sub. [YES]
Amends Title [NO]
Third Edition

Senator Hagan

moves to amend the bill on moves to amend the bill on page 5, lines 3 through 21, by rewriting the lines to read:

"b. A query of the database created pursuant to G.S. 53-281.6.

(b) A lender must pay the proceeds from a deferred deposit transaction to the borrower in the form of a check from the lender. Upon the borrower's request, the lender may cash the lender's check if the lender has cash available to do so. The borrower shall not be charged an additional finance charge or fee for cashing the lender's check.

(c) No lender shall enter into a deferred deposit transaction with a borrower who"; and

on page 6, line 37,
by rewriting the line to read:

"**SECTION 5.** Article 22 of Chapter 53 of the General Statues is amended by adding the following new sections to read:

"**§ 53-281.6. Database for reporting of deferred deposit loans.**

(a) On or before October 1, 2003, the Commissioner shall implement a common database with real-time access through an Internet connection for all lenders that offer deferred deposit loans, as provided in this section. The Commissioner may contract with a private vendor. The database shall be accessible to the Commissioner and lenders to verify whether any deferred deposit loans are outstanding for a particular customer. Lenders shall submit the required data before entering into each deferred deposit loan, before accepting an installment payment, and upon the repayment of each deferred deposit loan in a format and with the identifying information required by the Commissioner, including the drawer's name, address, drivers license number, amount of the loan, date of the loan, the date and amount of all installment payments made, the

date that the loan is paid off, and any additional information required by the Commissioner. All individual borrower information provided under this section shall be maintained by the Commissioner as confidential to be used only for the purposes specified in this Article, shall not be subject to public inspection, and shall not be a public record under Chapter 132 of the General Statutes. Inquiries to the database by lenders shall only reveal whether the borrower is eligible or ineligible for a deferred deposit loan together with a description of the reason for the determination. Only information previously registered and recorded by the lender on the database shall be made available to the lender. Only the borrower seeking the deferred deposit loan may make a direct inquiry to the Commissioner to request a more detailed explanation of a particular loan that was the basis for the database's ineligibility determination. The Commissioner may impose a fee not to exceed one dollar ($1.00) per loan to access the database. A lender may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying in good faith on information contained in the database. The Commissioner may adopt procedures to administer and enforce the provisions of this section and to assure that the database is used by lenders in accordance with this section.

(b) The Commissioner of Banks shall compile an annual report by April 1 of each year, beginning with April 1, 2005, containing data regarding all deferred deposit loans made in the preceding year by lender and on an aggregate basis. Annual reports shall be made available to interested parties and the general public. The report shall include all information reported by lenders pursuant to G.S. 53-281.7. Consistent with North Carolina law, the report shall include nonidentifying borrower data from the preceding year, which is available from the database, including:

(1) The total number and dollar amount of deferred deposit loans made in the calendar year ending as of December 31 of the previous year.

(2) The total number and dollar amount of deferred deposit loans outstanding as of December 31 of the previous year.

(3) The minimum, maximum, and average dollar amount of payment devices whose deposits were deferred in the calendar year ending December 31 of the previous year.

(4) The average annual percentage rate and the average number of days a deposit of a payment device is deferred during the calendar year ending as of December 31 of the previous year.

(5) The number of loans made in the amount of one hundred dollars ($100.00) or less, the number of loans made in the amount of one hundred one dollars ($101.00) to two hundred dollars ($200.00), the number of loans in the amount of two hundred one dollars ($201.00) to three hundred dollars ($300.00), and the percentage of total loans made in each of these ranges.

(6) The number of loans that, upon repayment or deposit of a borrower's deferred deposit payment device, ended in the first week of the loan and the number of loans repaid or ending with the deposit of a borrower's deferred deposit payment device for successive weeks up to 14 weeks with the corresponding APR range for each week.

(7) The total dollar amount of fees collected for deferred deposit payment devices cashed.

(8) The total number and dollar amount of returned deferred deposit payment devices and fees charged for those returned deferred deposit payment devices.

(9) The total number of loans and the total dollar amount of the net charge-offs or write-offs and recoveries of the lender.

(10) The number and percentage of borrowers that used one, two, three, and four deferred deposit loans.

"**§ 53-281.7. Annual reports by lenders.**

The Commissioner shall require licensees to submit an annual report to the Commissioner on or before the last day of February for the preceding year disclosing:

(1) The resources, assets, and liabilities of the licensees at the beginning and the end of the period.

(2) The income, expense, gain, loss, and a reconciliation of surplus or net worth with the balance sheets, and the ratios of the profits to the assets reported.

(3) The total dollar amount and number of returned checks, checks recovered, and checks charged off during the calendar year ending as of December 31 of the previous year.

(4) A statement verifying that the licensee has not used the criminal process or caused the criminal process to be used in the collection of any deferred deposit loan during the calendar year ending as of December 31 of the previous year.

(5) Any additional data or information which is reasonably available to the licensee and which the Commissioner deems necessary to the performance of the Commissioner's oversight duties."

SECTION 6. G.S. 53-277(a) reads as rewritten:

"(a) This Article shall not apply to:

(1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any ~~state; and~~ state, except that the following provisions shall apply to deferred deposit transactions under G.S. 53-281.1 entered into directly between such an entity and a North Carolina resident to the extent these provisions apply to licensees:

a. G.S. 53-275;
b. G.S. 53-281.1;
c. G.S. 53-281.2;
d. G.S. 53-281.3;
e. G.S. 53-281.4;
f. G.S. 53-281.5;
g. G.S. 53-281.6;
h. G.S. 53-281.7;
i. G.S. 53-286.

(2) Any person or entity principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of a retail sale or service and not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a fee or other consideration, where not more than two dollars ($2.00) is charged for the service."



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1213

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1213-ARU-32 [v.6]

SECTION 7. This act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1213

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1213-ARU-37 [v.2]

Date _____ ,2003

Comm. Sub. [YES]
Amends Title [NO]
H1213-CSRO-25

Senator Hoyle

moves to amend the bill on page 1, line 25, through page 2, line 30,
by rewriting the lines to read:

"(4b) 'Lender' means any person or entity that offers or makes a deferred deposit transaction, arranges a deferred deposit transaction for a third party, or acts as an agent for a third party, regardless of whether the third party is exempt from licensing under this Article or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party. Notwithstanding that a bank, savings institution, credit union, or farm credit system may be exempted by federal law from this Article's provisions related to interest rate, finance charges, and licensure, all other applicable provisions of this Article apply to both a deferred deposit transaction and a deferred deposit lender."; and

on page 5, lines 3 through 21, by rewriting the lines to read:

"b. A query of the database created pursuant to G.S. 53-281.6.

(b) A lender must pay the proceeds from a deferred deposit transaction to the borrower in the form of a check from the lender. Upon the borrower's request, the lender may cash the lender's check if the lender has cash available to do so. The borrower shall not be charged an additional finance charge or fee for cashing the lender's check.

(c) No lender shall enter into a deferred deposit transaction with a borrower who"; and

on page 6, line 37,
by rewriting the line to read:

"**SECTION 5.** Article 22 of Chapter 53 of the General Statues is amended by adding the following new section to read:

"**§ 53-281.6. Database for reporting of deferred deposit loans.**

(a) On or before October 1, 2003, the Commissioner shall designate a third-party provider to develop, implement and maintain a private database, with real-time access through an Internet connection, in accordance with the provisions of this section. The database must be accessible to the Commissioner and the lender to verify the aggregate amount and total number of deferred deposit loan transactions outstanding for a particular borrower. The Commissioner shall insure that the third-party provider operates the database in accordance with the provision of this section.

The database must be able to do all of the following:

(1) Validate a borrower's social security number and must report to the lender if any such social security number is invalid, has been issued within the past five years prior to the date of submission, or represents a deceased person. The database provider must maintain access to the database 24 hours a day, seven (7) days a week.

(2) Validate whether a new deferred deposit loan may be extended to the borrower based on the allowable number of loans and aggregate loan amount pursuant to this Article.

(3) Provide additional information to the lender, at the option and sole expense of the lender, that can be used to render a more informed risk assessment decision based on other information that may be available on the borrower that would be an indication of the borrower's ability to pay. This should include all of the following:

a. Past performance data on deferred deposit loans the borrower has secured within or without of the State.

b. Inquiry information from lenders outside the State that would indicate loans outside the State that may have been secured by the borrower.

c. Access to other performance information about the borrower in relation to other sub-prime industries.

d. Information necessary to ensure lender compliance with federal OFAC requirements.

In any event, the Commissioner shall maintain investigative and enforcement responsibility for violations of this section and shall not delegate this responsibility to any third-party provider.

(b) The designated third-party provider may impose a verification fee not to exceed one dollar ($1.00) per transaction for access to data required to validate whether a deferred deposit loan may be extended to the customer based on the allowable number of loans and aggregate loan amount pursuant to this Article.

(c) The lender may impose a verification fee not to exceed one dollar ($1.00) per transaction, or the actual amount charged to the lender, whichever is less, for data required to be submitted by a lender.

Lenders may rely on the information contained in the database as accurate and are not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database.

(d) In no event shall the total of outstanding checks have an aggregate principal amount from any one borrower exceeding three hundred dollars ($300.00). No single lender shall have at any given time, with any one borrower, a total of outstanding checks with an aggregate face value of more than three hundred forty dollars ($340.00), equaling the total amount loaned plus finance charge.

(e) A lender may not enter into any loan transaction with a person who has outstanding loan transactions, the principal amount of which in the aggregate exceed three hundred dollars ($300.00). The lender must verify the following information:

(1) The lender shall maintain an intra-company database and shall verify the total number of and aggregate dollar amount of all outstanding deferred deposit loan transactions between a particular person and that lender or an affiliate of the lender.

(2) Upon full implementation of the statewide common database, the lender shall access the database established pursuant to subsection (a) of this section and shall verify whether any other lenders have outstanding loan transactions with that person and whether the total dollar amount of all such outstanding loan transactions in the aggregate exceed three hundred dollars ($300.00). In addition, the lender, at its option, shall leverage any other additional data that may be available on the borrower, as outlined in subdivision (3) of

subsection (a) of this section, to render a more complete decision on the borrower's ability to repay the deferred deposit loan.

(f) Before entering into each deferred deposit loan, a lender shall submit the required borrower data in the format the Commissioner shall reasonably require, including the borrower's name, social security number, address, drivers license number, amount of the transaction, borrower check number, date of the transaction, maturity date of the transaction, and any other information reasonably required by the Commissioner.

(g) Prior to implementation of the database or during times when the database is unavailable to lenders due to technical problems, a lender may rely upon the written verification of the borrower in a statement provided in substantially the following form in at least ten-point type as follows:

INCLUDING THE LOAN TRANSACTION IN WHICH I AM ABOUT TO ENTER, I DO NOT HAVE OUTSTANDING DEFERRED DEPOSIT LOANS, WITH AN AGGREGATE OUTSTANDING BALANCE EXCEEDING $300.00, WITH THIS OR OTHER LICENSED DEFERRED DEPOSIT LENDERS.

(h) Any deferred deposit loan that has been fully paid and satisfied, as defined in subsection (h), shall be designated as a closed transaction in the database immediately, but in no event later than 11:59 p.m. on the day the loan was fully paid and satisfied. Failure to report the loan as paid in a timely manner will result in an automatic civil administrative penalty of $100 for each day that the lender fails to indicate in the database that the loan has been paid. A lender shall not be subject to civil administrative penalties in the event updates to the database are not possible due to circumstances beyond lender's control, including but not limited to, the database experiencing temporarily technical problems.

(i) A deferred deposit transaction shall be considered a closed transaction at the time that any of the following have been done with the check:

(1) Redeemed by the customer by payment to the lender of the face amount of the check in cash.

(2) Exchanged by the lender for a cashier's check or cash from the borrower's financial institution.

(3) Deposited by the lender and the lender has evidence that the check has cleared.

(4) Collected by the lender or its agent through any civil remedy available under State law.

(5) Collected by means of a repayment plan agreed upon by the borrower and the lender or as the result of credit counseling where the lender has been paid the amount agreed upon by lender under the plan.

(j) Notwithstanding the provisions of subsection (h) of this section, the designated third-party provider shall automatically close any outstanding customer transaction five (5) days following the loan maturity date unless a lender reports to the database provider prior to that time that any of the following apply:

(1) The transaction remains open, due to the borrower's failure to make payment.

(2) The transaction is pending, due to the borrower's check or an electronic re-deposit being in the process of clearing the banking system.

(3) The transaction remains open, due to the borrower's check being returned to the lender for insufficient funds, closed accounts or stop payment order.

If a lender timely reports the status of a transaction as open or pending, the transaction shall remain an open transaction until fully paid and satisfied, as defined in subsection (k) of this section and reported as such by the lender. If a lender ceases offering deferred deposit loans, all open transactions with the lender shall automatically close sixty (60) days following the date the lender ceases offering deferred deposit loans, unless the lender reports to the designated third-party provider prior to the expiration of the sixty-day (60) period (i) those borrower transactions that remain open; and (ii) the specific reason each transaction remains open; and further provides to the Commissioner a reasonably acceptable plan which outlines how the lender will continue to update the database following the ceasing of it deferred deposit operations. If at any time the Commissioner reasonably determines that a lender who has ceased its deferred deposit operations is not updating the database in accordance with its approved plan, the Commissioner shall immediately close all remaining transactions attributable to the lender.

(k) Inquiries to the database by lenders shall only state that a person is eligible or ineligible for a new deferred presentment transaction together with a description of the

reason for the determination. Only information previously registered and recorded by the lender on the database shall be made available to the lender by the database or the Commissioner. Only the person seeking the deferred presentment transaction may make a direct inquiry to the designated third-party provider to request a more detailed explanation of a particular transaction that was the basis for the database's ineligibility determination. Any information regarding any person's transactional history is confidential pursuant to this section, shall not be subject to public inspection and is not a public record under Chapter 132 of the General Statutes.

(l) As used in this section, the following terms mean:

(1) Open transaction or open. – A deferred deposit transaction that has been registered and recorded in the database but not closed or pending.

(2) Pending transaction or pending. – An open transaction that is in the process of clearing the banking system.

(3) Closed transaction or closed. – A deferred deposit transaction that has been terminated as defined in subsection (i) of this section."

SECTION 6. This act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

State of North Carolina

Roy Cooper
Attorney General

June 6, 2003

Dear Members of the Senate Commerce Committee:

I write you concerning House Bill 1213 – an act to regulate deferred deposit transactions, or payday lending. My position throughout the debate on payday lending over the past two years has been that consumers should have access to small, short-term emergency loans, but only if there are safeguards to protect them against abusive rates and frequent turnover.

Unfortunately, the proposal before you in House Bill 1213 fails to provide sufficient safeguards. Most importantly, the bill fails to address the problem of repeated, consecutive transactions that draws borrowers into a cycle of debt they are unable to escape. The minimum term of 14 days is too short for consumers to get their financial houses in order. Nor does it adequately close the out-of-state bank loophole. It is our hope that the strongest possible language eliminating this loophole and other devices to evade state regulation be included.

North Carolina should have a law setting standards for payday lending that protects consumers and gives the Commissioner of Banks the authority and enforcement tools to regulate the industry. Now payday lenders have affiliated with out of state banks to avoid state laws. Others are disguising their lending practices by characterizing them as cash "rebates" on services while charging consumers too much. We are taking some of those lenders to court, but without a stronger, new law, problem practices like rollovers and excessive fees will continue.

I stand ready to work with you on legislation that provides short-term consumer loans with sufficient consumer safeguards. Thank you for your consideration and for the work you do on behalf of the people of North Carolina.

Very truly yours,

Roy Cooper

Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629
Phone: (919) 716-6400 Fax: (919) 716-0803

AARP North Carolina

Testimony of Richard C. Hatch on HB-1213
NC Senate Commerce Committee
June 10, 2003

Good morning. My name is Richard C. Hatch. As an unpaid volunteer I serve as Coordinator of AARP's North Carolina Capital Advocacy Team. Thank you for this opportunity to speak about AARP's concern with House Bill 1213 and our opposition to it.

Like most AARP members who are retirees, I get paid once a month from Social Security and from my company pension. Sometimes, these monthly payments don't last for a full month, and I have a need for small short-term loans. AARP recognizes the need for short term loans, but we feel it is critical for North Carolina to effectively and fairly regulate short-term loan products such as payday loans. Bad loans with harmful terms help no one, and House Bill 1213 falls far short of AARP's principles for reasonable payday loan legislation.

There are many serious defects in House Bill 1213 that other speakers have addressed and whose concerns we share. But I would like to address an additional defect. This bill provides for a loan term as short as 14 days, and indeed that is the current duration of most payday loans. The bill allows for a longer repayment schedule ONLY if the borrower asks for it BEFORE the maturity date of the loan, and there is no requirement that the lender notify the borrower of this alternative. Moreover, to get a longer repayment schedule, the borrower must pay a $15 processing fee and one-fourth of the loan amount, for a possible first payment of $90. The lender has a strong financial incentive to have the borrower continue with back to back transactions, rather than enter the repayment plan.

More and more seniors will need assistance to support grandchildren and pay for medications, and will become increasingly vulnerable to payday lenders unless you take affirmative action to ensure that adequate consumer protections are part of this bill. AARP urges this Committee to amend HB 1213 to make a repayment plan with a 90 day minimum term automatic, and to eliminate any additional $15 processing fee.

We urge you to amend HB 1213 so that payday loan consumers and senior citizens are not trapped in a cycle of debt.

225 Hillsborough Street, Suite 440 | Raleigh, NC 27603 | 919-755-9757 | 919-755-9684 fax | 1-877-434-7598 TTY
James G. Parkel, President | William D. Novelli, Executive Director and CEO | www.aarp.org

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
4805 MT. HOPE DRIVE • BALTIMORE, MD 21215-3297 • (410) 358-8900

JULIAN BOND
Chairman, Board of Directors

Dear Member of the North Carolina General Assembly:

I am writing to urge you to stop the predatory practice of payday lending in North Carolina by preventing HB 1213 from becoming law. This anti-consumer bill perpetuates the very practices its supporters claim they want to regulate.

The NAACP, whose Board I chair, has long opposed predatory lending in all its forms, and last year passed a national resolution specifically opposing payday lending. On May 3, 2003, the NAACP Board passed a resolution prohibiting our units from accepting contributions from payday lenders. The Executive Committee of the North Carolina NAACP has condemned payday lending as a predatory practice aimed at minorities.

Nothing in HB 1213 will change the way lenders are allowed to trap distressed borrowers in a cycle of debt. The lenders' insistence that the loan be repaid in full in only 14 days is not a legitimate credit device – it's a way for lenders to be paid multiple fees on a single loan.

This bill is clearly intended to obstruct meaningful action by giving the appearance of reform. Most telling of all is a provision that allows unregulated lenders to easily exempt themselves from the law – a clear sign that the payday lending industry is more interested in perpetuating its predatory practices than agreeing to meaningful reform.

Don't be swayed by those who claim HB 1213 is a "tough" bill – it does nothing more than give state sanction to a practice that targets and abuses low-income borrowers in North Carolina. At this time more than ever, these citizens need your leadership to bring a real solution to this problem.

Yours sincerely,

Julian Bond
Chairman
NAACP National Board of Directors

PROBLEMS WITH HB 1213 (PAYDAY LENDING BILL)

1. HB 1213 CREATES A LOOPHOLE FOR OUT OF STATE BANKS AND AUTHORIZES "RENT A CHARTERS" TO EVADE NC LAW.

-One of the biggest problems with payday lending has been out of state banks evading North Carolina law and "renting" their charters to payday lenders so that they can evade NC law.

-HB 1213 specifically makes out of state banks completely exempt from its provisions.

- HB 1213 provides that: "a state or federally chartered bank ... shall be specifically exempt from provisions of this Article so long as ..it initially advances the loan proceeds .... [and any sale of its loans is authorized by its state regulator, e.g. a Nevada banking commissioner and] .. it develops the deferred deposit transaction program on its own." HB 1213, p. 2, lines 4-21. This means that a payday lender can buy a state bank and operate its payday lending out of that bank with complete disregard for NC law.

-HB 1213, by authorizing out of state banks to make payday loans and then immediately sell these loans to another company and remain completely exempt from NC law, encourages these banks to make and then sell payday loans to evade NC law.

-HB 1213 also exempts payday lenders who rent a charter. Under HB 1213, the payday lender renting a charter is exempt from any provisions of the law if any state or federal preemption applies to the bank. HB 1213 provides that an agent working with an out of state bank has to comply with the Article only "to the extent the provisions are not preempted by other state or federal laws." HB 1213, p. 2, lines 29-30.[1]

-Maryland adopted a provision regarding out of state banks that has effectively controlled them and lenders attempting to rent a charter. Maryland specifically prohibits the facilitation of loans that exceed Maryland law even if the bank renting the charter can claim federal preemption.[2]

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[1] The payday industry may argue this language is intended to mean that the agent does not have to comply with NC law only if the payday laws' provisions are preempted specifically as to the agent; but that is not what it says. Also, preemption is determined as a matter of federal law and does not depend on our statutes. So, if HB 1213 is not intended to expand out of state bank preemption, no provision is needed on this issue. Why are we enacting a provision that authorizes other states to preempt our laws?

[2] Maryland does not authorize payday lending, so this provision has prevented payday lending there. This type of provision would also be effective in making lenders comply with payday regulation.

-Federal regulators have clamped down on federal banks and thrifts, preventing them from engaging in payday lending because of its abuses. **HB 1213 will undercut federal efforts to limit payday lending abuses, by authorizing, as a provision of NC law, unlimited fees and other abusive practices by out of state banks.**

-Why should we create such a loophole and authorize out of state banks and rent a charter lenders to evade NC law? These loopholes harm consumers and also put North Carolina companies at a competitive disadvantage.

2. HB 1213 AUTHORIZES EXCESSIVE FEES.

-Florida limits fees to 10% of the check amount (plus a $5 verification fee); and average fees in Florida are 11% (286 % APR). Payday business is booming in Florida at this rate, according to the Florida Banking Department (nearly $1 billion in loans each year and a 50% annual growth rate in business). HB 1213 authorizes much higher fees of 15% (390 % APR) (with a cap of $40.)[3] **HB 1213 authorizes fees more than one third higher than Florida payday borrowers pay.**

-losses on North Carolina payday loans are only 1.7% (NC Commissioner of Banks Report), so NC loans perform extremely well.

-the US treasury department reports payday lenders earn 34% annual return on their investment.

-Why should North Carolina borrowers pay much more than Florida borrowers in order to pad payday lenders' already sky high profits?

3. HB 1213 WILL AUTHORIZE UNLIMITED ROLLOVERS OF LOANS.

-The original payday act in NC was predicated on "once in a blue moon" emergency loans, and there were assurances by the industry that there would be no rollovers or renewals of any kind the loans. The original payday lending act said "A lender shall not, for any consideration, renew or otherwise extend any deferred deposit check or withhold the check for any period." (N.C.G.S. § 53.281(e) (repealed)).

-Payday lenders evade the prohibition on renewals by doing "same day transactions." A borrower cashes his paycheck, and uses the cash to pay off the old payday loan. The payday lender then immediately writes a "new" loan in the same amount as the old loan, effectively renewing the old loan for two weeks and collecting a renewal fee. The <u>average</u> NC borrower gets <u>14</u> payday loans per year, and many

[3] Florida has a 7 day minimum term and an average loan term of 13.8 days. HB 1213 provides for a minimum 14 day term. Under prior law most NC loans are for 14 days, and this would be expected to continue under HB 1213.

borrowers renew loans for even longer periods. This means that the average NC borrower pays $775 to repay a $250 loan of money for less than three and a half months!

-HB 1213 uses the exact same language about rollovers as the old NC law, allowing continued unlimited rollovers through same day transactions.

4. PAYDAY LENDERS' CURRENT HIGH PROFITABILITY DEPENDS ON KEEPING BORROWERS IN THE DEBT TRAP, AND HB 1213 WOULD LET LENDERS CONTINUE TO DO THIS.

-the industry touts the repayment plan as the solution to the debt trap, but it won't work.

-the industry makes most of its money off of rollovers. "The financial success of payday lenders depends on their ability to convert occasional users to chronic borrowers." Michael Stegman, Kenan Institute of Private Enterprise, UNC. Studies show that most payday loans are rollovers of existing loans.

-In recognition that rollovers produce most of their profits, national payday lenders offer employees bonuses for obtaining rollovers. (Office of Comptroller of Currency fact sheet.)

-Payday lenders will steer borrowers away from the HB 1213 repayment plan.
- -under HB 1213, borrowers have to sign up before the maturity date; most borrowers come back in to the payday lender on the maturity date, thus not qualifying for the repayment plan.
- -in order to coerce borrowers, payday lenders can threaten to refuse to offer further credit in the future if the borrower goes onto the repayment plan.
- -in the short run, the HB 1213 repayment plan can cost the borrower more than a rollover (the borrower has to pay an additional $15 fee and one fourth of the loan at his next payday, and this will exceed the $40 renewal fee..)

-Borrowers should be protected from getting into the debt trap by having the law provide a longer minimum initial term (90 days) and an automatic conversion to an installment payment plan instead of a renewal.

5. HB 1213 HAS CRITICAL TECHNICAL PROBLEMS.

-joint holders of accounts. HB 1213 purports to limit the amount and number of payday loans that a borrower can have at one time. This can be evaded by making multiple loans to different persons on joint accounts.

-definition of maturity date. Any use of the repayment plan has to be requested before the maturity date. Lenders will evade this since most borrowers come in on

the maturity date. Lenders, who write the loan agreements, will define "maturity date" to the lender's advantage.

-the arbitration clause protection in HB 1213 is written in a way to be invalid, and it does not protect consumers from abusive arbitration clauses. The arbitration protection clause in HB 1213, p. 4, lines 15-18, is written in a way that ensures that it will be preempted by the Federal Arbitration Act, which prevents states from directly regulation the terms of arbitration. Instead, states have to protect borrowers by providing that contracts cannot have provisions requiring that borrowers use procedures that are more expensive or slower than court or that otherwise limit borrower rights. Payday lenders use arbitration clauses because the high fees required to be paid by borrowers seeking arbitration and the limited remedies available in arbitration prevent borrowers from being able to bring a claim to protect their rights.

Payday Advance Customers: Fact vs. Fiction
North Carolina Customers Give Personal Testimonials

Fiction: They prey on poor, uneducated and older consumers

Fact: Payday advance customers represent the heart of the working middle class

- Majority have incomes between $25,000 and $50,000
- 68% are under 45 years old; only 3.5% are 65 or older
- 94% have a high school diploma or better; 56% have some college or a degree
- 42% own their own homes
- 57% have major credit cards; 49% are credit union members
- 100% have a steady income and an active checking account, both required for an advance

Fiction: They target military personnel

Fact: The military represent a small percentage of payday advance customers

- 2001 study by Georgetown University's Credit Research Center found only 2% of payday advance customers nationally are military
- 2002 IoData survey of NC customers reported military make up only 6% of total customers; 94% of customers are not in the military & want the freedom to choose their financial options
- The largest payday advance provider in NC, Advance America, reported that military personnel represent only 1.5% of all current customers in 116 locations statewide

Fiction: They charge outrageous rates

Fact: Payday advance fees typically cost less than customers' alternatives

- Bank/merchant fees on one bounced check can cost three times that of a $100 advance
- Payday advance APRs are often lower than customers' alternatives, even on same 2-week term
  - $100 payday advance with $15 fee = 391% APR
  - $100 bounced check with $48 NSF & merchant fees = 1,251% APR
  - $100 credit card balance with $29 late fee = 756% APR
  - $100 utility bill with $47 late/reconnect fee = 1,225% APR
- 96% of customers are aware of the finance charge; 78% recalled it being disclosed as an APR

Fiction: They put customers into a cycle of debt

Fact: Most customers use payday advance responsibly

- 66% use payday advance to cover unexpected expenses or temporary income reduction
- Research & regulators confirm that most use payday advance moderately
  - The Credit Research Center reported more than half use payday advance 6 or fewer times annually; 78% use it between once a year and about once a month
  - PricewaterhouseCoopers' industry survey found the average customer took out 7.3 advances a year
  - 2001 NC Commissioner of Banks report said 48% used an advance 6 or fewer times annually; 73% took out between 1 and 12 advances a year; the average was 6.9 per year

Fiction: They take advantage of unsuspecting customers

Fact: Nationally, and in NC, customers overwhelmingly appreciate the service

- Millions choose payday advance as a dignified, discreet, and often less costly solution for cash flow problems, without asking family for money or risking personal items as collateral
- 70% choose payday advance for convenience; only 6% because there was no alternative
- 87% of NC customers say payday advance is a useful service; only 10% were dissatisfied
- State regulators across the country report very few complaints out of millions of transactions
  - NC Commissioner of Banks reported 44 complaints in 4 years under state regulation

VOICE

VOICES OF PAYDAY ADVANCE









DAVID W. LYNN, JR.

LINCOLNTON, NORTH CAROLINA

David W. Lynn, Jr. spends his days helping people out when they're in trouble. As a highway transportation worker he drives along North Carolina's interstates helping people who are stuck in a disabled vehicle or those who have just been in an accident. David does whatever it takes to make the roads safer, including getting rid of debris on the road to prevent accidents.

"I'm a combination of police, fire medic, and tow truck. I love my job because I feel like I've done some good at the end of every day," says David.

When David was in a rough financial spot, he received help from a payday advance company. "I got sick and fell behind on a bill," said David. "Payday advance was quick and easy to pay back. I don't like to go to friends or family because it always seems like such a hassle. The people at the payday advance place were nice and pleasant, and you can depend on them."

David paid his balance back in two weeks and knows that if he ever needs financial help, payday advance is there. That reassurance makes it easier for David to continue doing his own job of helping people in need.

"The people at the payday advance place were nice and pleasant, and you can depend on them."

CFSA

www.cfsa.net

VOICE

VOICES OF PAYDAY ADVANCE









BETTINA GUFFEY

BOILING SPRINGS, NORTH CAROLINA

Bettina Guffey has been on the move for most of her life. As part of a military family, she lived in several states and got used to long trips in the car. As a wife and mother of three, Bettina still spends a good deal of her time on the road. Her job as a sales clerk requires Bettina to drive several hours each day.

When the economy took a downturn and gas prices skyrocketed, Bettina and her family found themselves spending more money just to keep their family cars on the road. Bettina and her husband, who also has a long commute, were short one month and needed some extra cash to get by until their next payday.

Bettina did her research and found that payday advance was the best option for her family. Payday advance allowed them to keep their cars running and their lives in order. And, for that, she says, she is very grateful. "Not all people have perfect credit," she said. "Payday advance is a good option available to just about anyone who needs cash in a hurry. It's a convenient way to get cash when you really need it."

"Payday advance is a good option available to just about anyone who needs cash in a hurry. It's a convenient way to get cash when you really need it."

CFSA

www.cfsa.net

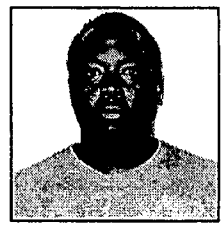
VOICE

VOICES OF PAYDAY ADVANCE









FREDERICK ALLISON

HIGH POINT, NORTH CAROLINA

Frederick Allison is a devoted father of three who loves sports and relaxing while fishing with his wife. He works hard during the day as a furniture inspector. Like most people, it is important to Frederick to make sure he can provide a good home for his family. It isn't always easy, but he is careful with his money and knows how to get by when things get rough.

Several months ago, Frederick's car broke down at the same time his rent was due. He needed his car to get to work, but his next paycheck wasn't due for another two weeks and he didn't want to get behind on his other bills.

Frederick evaluated his options. He didn't want to use credit cards because he didn't want any long-term debt. He also felt it wasn't right to ask family or friends for help. Frederick considered payday advance and decided it was the right option for his family. It allowed him to cover the expense of fixing his car before his next paycheck. And now Frederick and his family are back on the road and enjoying fishing season.

"Payday advance allowed me to stay independent and do it on my own without falling behind on my other bills. I am grateful that the service was there."

CFSA

www.cfsa.net

VOICE

VOICES OF PAYDAY ADVANCE









ELAINE ROGERS

GROVER, NORTH CAROLINA

Elaine Rogers is a proud mother of two who just sent her first child to college. She and her husband of twenty years dote on their children, and do everything in their power to help them out as much as possible.

When her youngest needed new eyeglasses and her eldest needed some help paying college expenses, she didn't know where to turn for a short-term loan. Payday was a week away. Elaine and her husband didn't have a lot of cash on hand and didn't want to borrow money from family or friends.

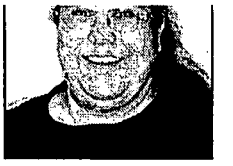
"I was in a jam with some things that just couldn't wait until payday," she said. Elaine did some research and decided payday advance was the right option for her family. She was able to take care of the unplanned expenses immediately and pay back the loan next payday.

Elaine was thankful that she had somewhere to turn. "I like to know they're there if I need them. They're real nice people and it's a service you need now and then."

"I like to know they're there if I need them. They're real nice people and it's a service you need now and then."

CFSA

www.cfsa.net









VOICES OF PAYDAY ADVANCE

VOICE

MARY BATES

PINNACLE, NORTH CAROLINA

Mary Bates is a car enthusiast. When she's not working as a shift supervisor at a packaging plant, she's busy trying to restore a green vintage 1972 Ford Maverick. With her automotive knowledge, Mary knew she was in trouble when her everyday car needed a new transmission. She relies on the car to get to work and didn't have the money to replace the part.

Mary evaluated her options. She doesn't like to borrow money from family or friends, as she likes to keep her finances private. Recommended by a close friend, Mary decided payday advance was the right choice for her. "It's less of a hassle," she said.

"I really liked the people and they provided me a great service."

Mary got the money she needed to fix her car and paid the loan back in two weeks. "Payday loans are really convenient and they help people get out of a bind."

Mary is happy that she's back on the road, but she can't wait for the day that she gets to drive her '72 Maverick.

"Payday loans are really convenient and they help people get out of a bind."

CFSA

www.cfsa.net

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 10, 2003, after session

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	SAGD AT
	NCCCA
	Hunton & Wms.
	x/C Credit Union Leg.
Tommy Reinheimer	Veritec Solutions LLC
	LBA
	CFSA
T. Colletti	CFSA
	DCSR
	WCSR
Rich Alterman	Teltrack
	Bayard & Spruill

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 10, 2003, after session

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charlie Chrisawn	Poyner + Spruill
Robert Paschal	Young, Moore
[illegible]	Bone & Assoc Resident Lenders
Elizabeth Dalton	Bone & Assoc / Res. Lenders
Rebecca Ann Peterson	NC Justice Center
Reginald Johnson	Coalition for Responsible Lending
Keith Crisco	CRL
Susan Lupton	Coalition for Responsible Lending
Daryn Dodson	Center for Responsible Lending
G.I. Allison	Democracy North Carolina
Tanya Wolfram	Community Reinvestment Assoc. of NC

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 10, 2003, after session

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Regina Green	NC Low Income Housing Coalition
Susan Valaur	Nationwide
	Ace Cash Express
	NC AFCO
	Smith Anderson
	NBC / CFSA
Richard C. Hatch	AARP
	CRL
Yolanda McGill	CRL

Senate Commerce Committee
Thursday, June 12, 2003, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 339	Life and Health Insurance Omnibus.-AB	Representative Wright
HB 994	Public Works Exemption.	Representative Williams
HB 1023	Underinsured Motorist Coverage.	Representative Goodwin

Presentations

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Thursday, June 12, 2003 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Thursday, June 12, 2003, in Room 1027 of the Legislative Building. Ten members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced the pages: Jane Randolph Johnston of Greensboro sponsored by Senator John Kerr; Sarah Roach of Greensboro, sponsored by Senator Kay Hagan; and Samantha Levy of Greensboro, also sponsored by Senator Hagan.

Senator Soles told the committee that HB 994, Public Works Exemption, had been returned to the Commerce Committee. Senator Virginia Foxx moved that the vote by which HB 994 had received a favorable report be reconsidered. The motion carried. The bill was displaced for the preparation of an amendment that the sponsor, Representative Keith Williams, explained.

Senator Soles told the committee he had held back on reporting HB 339, Life and Health Insurance Omnibus-AB, because of concerns expressed to him following the meeting at which the bill had received a favorable report. Senator Tony Rand moved that the vote by which HB 339 had received a favorable report be reconsidered. The motion carried. Mr. Frank Folger, Department of Insurance, commented on the bill. Mr. Tim Hovis, Counsel to the Committee, explained an amendment he had drafted. Representative Tom Wright, sponsor of the bill, answered questions. Mr. Robert Pascal, representing the Health Insurance Association of America and the North Carolina Association of Health Underwriters, spoke on the bill and the amendment. Ms. Helen Savage, representing the North Carolina chapter of the American Association of Retired Persons (AARP), spoke in favor of the amendment. Ms. Linda Attarian, from the office of the Democratic Speaker, Representative Jim Black, explained one of the issues addressed in the amendment. Several members of the Committee expressed confusion over the concept of "issue age" versus "attained age." Senator Soles displaced the bill from discussion at the meeting and said it would be reconsidered at the Committee's next meeting.

Discussion returned to HB 994. Senator David Hoyle sent forth and amendment and moved its adoption. The motion carried. After inconclusive discussion on the amendment, Senator Soles asked the parties to meet before the next meeting to clarify the amendment, and displaced the bill from discussion.

Senator Soles introduced Representative Wayne Goodwin to explain a committee substitute to HB 1023, Underinsured Motorist Coverage. Senator William Purcell moved to adopt a committee substitute. The motion carried. Senator Phil Berger moved to give an unfavorable report to the bill, but favorable report to the committee substitute. The motion carried.

The meeting adjourned at 11:55 a.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Monday, June 16, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1023** Underinsured Motorist Coverage.

Draft Number:	PCS 45161
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

HOUSE BILL 1023: UNINSURED/UNDERINSURED MOTORIST COVERAGE

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Goodwin
Date:	June 9, 2003	**Summary by:**	Kory J. Goldsmith Committee Counsel
Version:	Proposed Committee Substitute H1023-CSRC-77[v.4]		

SUMMARY: ***House Bill 1023 provides that in a car accident where more than one person is injured, an injured person may have an underinsured motorist claim if the total amount actually paid to the injured person under bodily injury liability insurance is less than the limit of underinsured motorist coverage.***

The Proposed Committee Substitute also makes 2 changes:

1. Clarifies that if there are multiple injured parties, the injured parties in the "at-fault" vehicle can not assert an underinsured motor vehicle claim against the "at-fault" vehicle unless that vehicle's underinsured policy limits exceed its liability policy limits.

2. Allows a claimant may to "stack" separate uninsured motorist insurance policies.

BACKGROUND: "**Stacking**" is a term that is used when determining the policy limits that are available to compensate an injured person under a single or multiple auto insurance policies. "**Intra-policy**" stacking refers to situations where an insurance policy insures multiple vehicles and whether the policy limits are determined by multiplying the per accident or per person limit by the number of insured vehicles. "**Inter-policy**" stacking refers to situations where multiple, but separate motor vehicle insurance policies insure the same motor vehicle or person.

"**Uninsured motor vehicle**" or "**UM**" means a motor vehicle that has less than $30,000 per person, $60,000 per accident liability insurance. "**Underinsured motor vehicle**" or "**UIM**" means a motor vehicle that causes an accident and that has liability coverage that is less than the total limits of liability coverage available under other insurance policies to the passengers in the other vehicle.

CURRENT LAW: In 1991, the General Assembly passed legislation that clearly prohibited intra-policy stacking for both UIM and UM policies. (SB688). The same legislation appears to have prohibited inter-policy stacking for UM policies. The legislation clearly allows inter-policy stacking for UIM policies.

Uninsured Motorist coverage [G.S. 20-279.21(b)(3)] – A recent North Carolina Court of Appeal decision, Hoover v. State Farm Mutual Insurance Company, 576 S.E.2d 396 (2003), has the effect of prohibiting inter-policy stacking of UM coverage. In Hoover, the insured and his employer jointly owned a motor vehicle that the insured used for business. The insured carried $250,000 worth of UM coverage and the insured's employer carried $1,000,000 worth of UM coverage under a separate policy. The insured sustained in excess of $1,250,000 worth of injuries in an accident with an uninsured motorist. The insured attempted to collect the limits of liability from each policy, but the NC Court of Appeals held that the maximum liability coverage available was $1,000,000, which the court prorated between the two insurance companies.

Underinsured Motorist coverage – [G.S. 20-279.21(b)(4)] Persons injured in a car accident do not have an UIM claim if the liability insurance limit of the "at-fault" vehicle is equal to or greater than the limit of UIM coverage for the injured parties. This is true even under circumstances where, because there are multiple claims against the liability insurance, the share of the liability insurance proceeds actually paid to the injured person is less than the UIM limits. **(See Example #1 below)**

A passenger in the "at-fault" vehicle who is injured may share in the liability coverage. In addition, if the "at-fault" vehicle has UIM coverage with policy limits that exceed the liability limits, passengers in the "at-fault" vehicle may recover the excess coverage. However, if the "at-fault" auto's liability limits and UIM limits are the same, the passenger can not recover from the UIM coverage. **(See Example #2 below).**

Example #1: Assume a car accident caused by A that injures B (driver), C & D in another car. B, C & D's injuries total $350,000. A has bodily injury liability insurance with a $300,000 per accident limit. B has UIM insurance with a $300,000 per accident limit. Because A's liability limit is the same as B's underinsured limit, A's auto is not an underinsured motor vehicle and therefore B's UIM policy cannot be used to compensate B, C & D. Instead, the $300,000 under A's policy will be prorated between B, C & D, but $50,000 remaining injuries will not be compensated.

Example #2 Assume the facts under example #1 except X is a passenger in A's auto and has $50,000 worth of injuries. X is entitled to receive a pro-rated amount from A's liability coverage. Assume also that A carries $300,000 worth of underinsured motorist coverage. X cannot recover under A's UIM policy because the UIM and the liability limits are the same. X could, however, recover from A's UIM policy if A's UIM limits exceed A's liability coverage limits.

BILL ANALYSIS:

Section 1 amends G.S. 20-279.21(b)(3) to allow inter-policy stacking of UM coverage.

Section 2 amends G.S. 20-279.21(b)(4) to provide an additional definition of "underinsured motor vehicle". It provides that in an auto accident where more than one person is injured, a person injured in the accident may have an underinsured motorist claim if the total amount actually paid to the injured person under bodily injury liability insurance is less than the limit of underinsured motorist coverage. **(See Example #3 below).** The PCS also contains language to maintain the current law regarding whether a passenger in the "at-fault" auto has a claim against the "at-fault" driver's UIM coverage. A UIM claim would be not be available if the liability limits have been exhausted and the UIM limits are less than or equal too the UIM limits. **(See Example #4 below)**

Example #3: Assume the facts of #1 above, the amounts paid individually to Persons B, C, & D would have been less than the $300,000 UIM limit. Therefore, A's auto would be considered an underinsured auto and Persons B, C & D would have a UIM claim.

Example #4: Assume the same facts as #2 above. By definition, A's liability policy has been exhausted. If A also has UIM coverage that exceeds the $300,000 liability limit, X may recover for uncompensated damages from A' UIM policy. If A's UIM limits are the same or less than the liability limits, X can not recover under the UIM policy.

EFFECTIVE DATE: This act would become effective January 1, 2004 and apply to accidents occurring on or after that date.

H1023-SMRC-002 Jeff Hudson contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 994

Committee Substitute Favorable 4/23/03

Senate Commerce Committee Substitute Adopted 6/4/03

Short Title: Public Works Exemption. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT ALLOWING THE STATE, COUNTIES, AND CITIES TO CONSTRUCT PREENGINEERED STRUCTURES WITHOUT HAVING THE PLANS AND SPECIFICATIONS FOR THE STRUCTURES REVIEWED BY A REGISTERED ARCHITECT OR ENGINEER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 133-1.1(c) reads as rewritten:

"(c) The following shall be excepted from the requirements of subsection (a) of this section:

(1) Dwellings and outbuildings in connection therewith, such as barns and private garages.

(2) Apartment buildings used exclusively as the residence of not more than two families.

(3) Buildings used for agricultural purposes other than schools or assembly halls which are not within the limits of a city or an incorporated village.

(4) Temporary buildings or sheds used exclusively for construction purposes, not exceeding 20 feet in any direction, and not used for living quarters.

(5) Preengineered garages, sheds, and workshops used exclusively by city, county, public school, or State employees for purposes related to their employment."

SECTION 2. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 994 DATE 6/12/2003

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, lines 20-22

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"(5) Pre-engineered garages, sheds, and workshops up to 5,000 square feet for no more than 10 ~~occupants~~ assigned employees used exclusively by city, county, public school, or State employees for purposes related to their employment. For pre-engineered garages, sheds, and workshops constructed pursuant to this subdivision, there shall be a minimum separation of these structures from other buildings or property lines of 30 feet."

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 339

Committee Substitute Favorable 4/24/03
Committee Substitute #2 Favorable 4/30/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H339-PCS30362-RG-22

Short Title: Life and Health Insurance Omnibus.-AB (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO CONFORM NORTH CAROLINA'S THIRD PARTY ADMINISTRATOR ARTICLE TO REVISIONS TO THE NAIC MODEL THIRD PARTY ADMINISTRATOR STATUTE; REQUIRE GROUP ANNUITY INSURERS TO ISSUE INDIVIDUAL CERTIFICATES OF COVERAGE TO EACH ANNUITANT; REORGANIZE ARTICLE 60 OF CHAPTER 58 OF THE GENERAL STATUTES AND AMEND CURRENT DISCLOSURE REQUIREMENTS FOR SOLICITATION OF LIFE INSURANCE PRODUCTS AND ANNUITIES; REQUIRE INSURERS TO NOTIFY EMPLOYEES OF THE EXISTENCE OF EMPLOYER-OWNED LIFE INSURANCE POLICIES WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF COVERAGE; REQUIRE THAT ASSOCIATION PREMIUM RATES FOR ACCIDENT AND HEALTH INSURANCE BE ACTUARIALLY SOUND AND THAT ASSOCIATIONS BE RATED AS A SINGLE GROUP WHEN THE COVERAGE PROVIDED IS NOT EMPLOYER-BASED; LIMIT AN INDIVIDUAL ACCIDENT AND HEALTH INSURER'S USE OF AN INDIVIDUAL'S OWN CLAIMS' EXPERIENCE TO DEVELOP THE INDIVIDUAL'S RENEWAL RATE; EXEMPT A SOLE PROPRIETOR FROM THE FULL-TIME BASIS OR THIRTY-HOUR WORKWEEK REQUIREMENTS TO BE ELIGIBLE FOR LARGE GROUP HEALTH COVERAGE LIKE THE PROPRIETOR'S FULL-TIME EMPLOYEES; CORRECT AN INADVERTENT CROSS-REFERENCE IN ORDER TO REAPPLY NEWBORN COVERAGE TO A MORE COMPREHENSIVE GROUP OF INSURERS; TECHNICALLY CORRECT AN OMISSION REGARDING PROVISIONS GOVERNING PREEXISTING CONDITIONS FOR LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES; DECREASE THE TOTAL NUMBER OF MEMBERS THAT SERVE ON THE

SMALL EMPLOYER REINSURANCE POOL BOARD FROM NINE TO SIX; ALLOW PERSONS RETROACTIVELY ENROLLED IN MEDICARE PART B THE SAME SIX-MONTH OPEN ENROLLMENT PERIOD FOR MEDICARE SUPPLEMENT PLANS AS PERSONS WHO ENROLLED IN MEDICARE PART B WITHOUT A RETROACTIVE EFFECTIVE DATE OF COVERAGE; TECHNICALLY CORRECT THE REVOCATION AND SUSPENSION LAW TO INCLUDE A BENEFICIARY OF A LIFE OR ANNUITY CONTRACT AS A CLAIMANT; MANDATE HEALTH BENEFIT COVERAGE FOR DESIGNATED TRAVEL EXPENSES WHEN THE REQUIRED DISTANCE TRAVELED THRESHOLD IS MET; TO REQUIRE RATE METHODOLOGY UNDER MEDICARE SUPPLEMENTAL INSURANCE POLICIES TO BE BASED ON ISSUE AGE AND TO MAKE OTHER CHANGES TO THE LAW PERTAINING TO MEDICARE SUPPLEMENTAL INSURANCE POLICIES; AND MAKE TECHNICAL CORRECTIONS TO THE CREDIT INSURANCE LAWS.

The General Assembly of North Carolina enacts:

PART I. THIRD PARTY ADMINISTRATOR ACT REWRITE

SECTION 1. G.S. 58-56-2 is repealed.

SECTION 1.1. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-3. Definitions.**

As used in this Article:

(1) "Administrator", "third party administrator", and "TPA" mean a person who directly or indirectly underwrites, collects, or charges premiums from, or adjusts or settles claims on, residents of this State in connection with life, annuity, or health coverage offered or provided by an insurer, except any of the following:

a. An employer, or a wholly owned direct or indirect subsidiary of an employer, on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer.

b. A union on behalf of its members.

c. An insurer that is authorized to transact insurance in this State pursuant to Articles 1 through 67 of this Chapter.

d. An insurance producer licensed to sell life, annuity, or health coverage in this State, whose activities are limited exclusively to the sale of insurance.

e. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.

f. A trust and its trustees, agents, and employees acting pursuant to a trust established in conformity with 29 U.S.C. § 186.

g. A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees and employees acting pursuant to the trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account which

meets the requirements of section 401(f) of the Internal Revenue Code.

h. A credit union or a financial institution that is subject to supervision or examination by federal or State banking authorities, or a mortgage lender, to the extent it collects and remits premiums to licensed insurance producers or to limited lines producers or authorized insurers in connection with loan payments.

i. A credit card issuing company that advances for and collects insurance premiums or charges from its credit card holders who have authorized collection.

j. A person who adjusts or settles claims in the normal course of that person's practice or employment as a licensed attorney and who does not collect charges or premiums in connection with life, annuity, or health coverage.

k. An adjuster licensed by this State whose activities are limited to adjustment of claims.

l. A person licensed as a managing general agent in this State, whose activities are limited exclusively to the scope of activities conveyed under the license.

m. An administrator who is affiliated with an insurer and who only performs the contractual duties (between the administrator and the insurer) of an administrator for the direct and assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator's books and records to the Commissioner, upon a request from the Commissioner.

(2) "Affiliate or affiliated" means an entity or person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Commissioner" means the Commissioner of Insurance of this State.

(4) "Control" means the term as defined in G.S. 58-19-5(2).

(5) "GAAP" means United States generally accepted accounting principles consistently applied.

(6) "Home state" means the District of Columbia and any state or territory of the United States in which an administrator is incorporated or maintains its principal place of business. If neither the state in which the administrator is incorporated nor the state in which it maintains its principal place of business has adopted the NAIC Third Party Administrator Statute, or a substantially similar law governing administrators, the administrator may declare another state in which it conducts business to be its "home state".

(7) "Insurance producer" means a person who sells, solicits, or negotiates a contract of insurance as those terms are defined in this Article.

(8) "Insurer" means an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, and a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(9) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(10) "Nonresident administrator" means a person who is applying for licensure or is licensed in any state other than the administrator's home state.

(11) "Person" means an individual or a business entity.

(12) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(13) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(14) "Underwrites" or "underwriting" includes the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer or self-funded plan and also includes the overall planning and coordinating of a benefits program.

(15) "Uniform Application" means the current version of the NAIC Uniform Application for Third Party Administrators."

SECTION 1.2. G.S. 58-56-6 reads as rewritten:

"**§ 58-56-6. Written agreement necessary.**

(a) No TPA may act as a TPA without a written agreement between the TPA and the insurer. The written agreement shall be retained as part of the official records of both the insurer and the TPA for the duration of the agreement and for five years thereafter. The agreement shall contain all provisions required by this Article, ~~to the extent those requirements apply to the functions performed by the TPA.~~ except insofar as those requirements do not apply to the functions performed by the TPA.

(b) The agreement shall include a statement of duties that the TPA is expected to perform on behalf of the insurer and the ~~kinds of insurance the TPA is to be authorized to administer.~~lines, classes, or types of insurance for which the TPA is to be authorized to administer. The agreement shall provide for underwriting or other standards pertaining to the business underwritten by the insurer.

(c) The insurer or TPA may, with written notice, terminate the written agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the TPA during the pendency of any dispute regarding the cause for termination of the agreement. The insurer ~~must~~ shall fulfill any lawful obligations with

respect to policies affected by the agreement, regardless of any dispute between the insurer and the TPA."

SECTION 1.3. G.S. 58-56-16 reads as rewritten:

"**§ 58-56-16. Records to be kept.**

(a) Every TPA shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance record keeping and must be maintained for a period of at least five years after the date of their creation.

~~(b) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. The Commissioner shall keep confidential any trade secrets contained in those books and records, including the identity and addresses of policyholders and certificate holders, except that the Commissioner may use the information in any judicial or administrative proceeding instituted against the TPA.~~

(c) The insurer shall own the records generated by the TPA pertaining to the insurer, but the TPA shall retain the right to continuing access to books and records to permit the TPA to fulfill all of its contractual obligations to insured parties, claimants, and the insurer.

(d) In the event the insurer and the TPA cancel their agreement, notwithstanding the provisions of subsection (a) of this section, the TPA may, by written agreement with the insurer, transfer all records to a new TPA rather than retain them for five years. In this case, the new TPA shall acknowledge, in writing, that it is responsible for retaining the records of the prior TPA as required in subsection (a) of this section.

(e) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. Any documents, materials, or other information in the possession or control of the Commissioner that are furnished by a TPA, insurer, insurance producer, or an employee or agent thereof acting on behalf of the TPA, insurer, or insurance producer, or obtained by the Commissioner in an investigation shall be confidential by law and privileged, shall not constitute a public record as defined by G.S. 132-1, shall not be subject to subpoena, shall not be subject to discovery, and shall not be admissible in evidence in any private civil action. However, the Commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.

(f) Neither the Commissioner nor any person who receives documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (e) of this section.

(g) In order to assist in the performance of the Commissioner's duties, the Commissioner:

(1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (e) of this section, with other State, federal, and

international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, and with State, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(2) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(3) May enter into agreements governing sharing and use of information consistent with this subsection.

(h) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (g) of this section.

(i) Nothing in this Article shall prohibit the Commissioner from releasing final, adjudicated actions including for-cause terminations that are open to public inspection pursuant to Chapter 132 of the General Statutes or to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or its subsidiaries."

SECTION 1.4. G.S. 58-56-51 is repealed.

SECTION 1.5. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-52. Home state certificate of authority or license.**

(a) A person shall apply to be a TPA in its home state upon the Uniform Application and shall receive a certificate of authority or license from the Commissioner of its home state prior to performing any function of a TPA in this State. Each application shall be accompanied by a nonrefundable filing fee of one hundred dollars ($100.00).

(b) The Uniform Application shall include or be accompanied by the following information and documents:

(1) All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, and other applicable documents and all amendments to those documents.

(2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the applicant.

(3) NAIC Biographical Affidavit for the individuals who are responsible for the conduct of affairs of the applicant, including all members of the

board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company; any shareholders or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the applicant; and any other person who exercises control or influence over the affairs of the applicant.

(4) Audited annual financial statements or reports for the two most recent fiscal years that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two fiscal years, the Uniform Application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years and for any month during the current fiscal year for which the financial statements or reports have been completed. The applicant shall also include any other information the Commissioner requires in order to review the current financial condition of the applicant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include all of the following:

a. Amounts shown on the consolidated audited financial report shall be shown on the worksheet.

b. Amounts for each entity shall be stated separately.

c. Explanations of consolidating and eliminating entries.

(5) A statement describing the business plan including information on staffing levels and activities proposed in this State and nationwide. The plan shall provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping, and underwriting.

(6) Any other pertinent information required by the Commissioner.

(c) A TPA licensed or applying for licensure under this section shall make available for inspection by the Commissioner copies of all contracts with insurers or other persons utilizing the services of the TPA.

(d) A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

(e) The Commissioner may refuse to issue a certificate of authority or license if the Commissioner determines that the TPA, or any individual responsible for the conduct of affairs of the TPA, is not competent, trustworthy, financially responsible, or of good personal and business reputation, has had an insurance or an administrator certificate of authority or license denied or revoked for cause by any jurisdiction, or if

the Commissioner determines that any of the grounds set forth in G.S. 58-56-72 exists with respect to the TPA.

(f) A certificate of authority or license issued under this section shall remain valid, unless surrendered, suspended, or revoked by the Commissioner, for so long as the TPA continues in business in this State and remains in compliance with this Article.

(g) A TPA licensed or applying for licensure under this section shall immediately notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a certificate of authority or license in this State. The Commissioner shall report any such changes to the producer database maintained by the NAIC or affiliates or subsidiaries of the NAIC."

SECTION 1.6. G.S. 58-56-56 is repealed.

SECTION 1.7. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-57. Registration requirement.**

A person who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this State in connection with life, annuity, or health coverage provided by a self-funded plan shall register with the Commissioner annually, verifying its status as herein described in a format prescribed by the Commissioner."

SECTION 1.8. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-62. Annual report and filing.**

(a) Each TPA licensed under G.S. 58-56-52 shall file an annual report for the preceding calendar year with the Commissioner on or before July 1 of each year or within such extension of time as the Commissioner for good cause may grant. The annual report shall include an audited financial statement performed by an independent certified public accountant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the information required under G.S. 58-56-52(b)(4)a. through c. The report shall be in the form and contain such matters as the Commissioner prescribes and shall be verified by at least two officers of the TPA.

(b) The annual report shall include the complete names and addresses of all insurers with which the administrator had agreements during the preceding fiscal year.

(c) At the time of filing its annual report, the administrator shall pay a nonrefundable filing fee of one hundred dollars ($100.00).

(d) The Commissioner shall review the most recently filed annual report of each administrator on or before September 1 of each year. Upon completion of its review, the Commissioner shall either:

(1) Issue a certification to the administrator that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is currently licensed and in good standing, or noting any deficiencies found in the annual report and financial statements; or

(2) Update any electronic database maintained by the National Association of Insurance Commissioners, or its affiliates or subsidiaries, indicating that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is in compliance with existing law, or noting any deficiencies found in the annual report."

SECTION 1.9. G.S. 58-56-66 is repealed.

SECTION 1.10. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-67. Nonresident administrator certificate of authority.**

(a) Unless a TPA has obtained a home state certificate of authority or license in this State under G.S. 58-56-52, any TPA who performs administrator duties in this State shall obtain a nonresident administrator certificate of authority or license in accordance with this section by filing with the Commissioner the Uniform Application accompanied by a letter of certification from the home state of the TPA. In lieu of requiring a TPA to file a letter of certification with the Uniform Application, the Commissioner may verify the nonresident administrator's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries.

(b) A TPA shall not be eligible for a nonresident administrator certificate of authority or license under this section if it does not hold a certificate of authority as a resident in a home state that has adopted the NAIC Third Party Administrator Statute or a substantially similar law governing TPAs.

(c) Except as provided in subsections (b) and (h) of this section, the Commissioner shall issue to the TPA a nonresident administrator certificate of authority or license promptly upon receipt of a complete application.

(d) Unless notified by the Commissioner that the Commissioner is able to verify the nonresident TPA's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners, or its affiliates or subsidiaries, each nonresident TPA annually shall file a statement that its home state administrator certificate of authority or license remains in force and has not been revoked or suspended by its home state during the preceding year. The statement required by this subsection shall be filed by November 1 each year.

(e) At the time of filing the statement required under subsection (d) of this section or if the Commissioner has notified the nonresident administrator that the Commissioner is able to verify the nonresident administrator's home state certificate of authority or license status through an electronic database, the nonresident TPA shall pay, no later than November 1, a nonrefundable filing fee of one hundred dollars ($100.00).

(f) A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

(g) A nonresident TPA is not required to hold a nonresident administrator certificate of authority or license in this State if the TPA's duties in this State are limited to the administration of a group policy or plan of insurance and no more than a total of 100 persons insured for all plans reside in this State.

(h) The Commissioner may refuse to issue a nonresident administrator certificate of authority or license, or delay the issuance of a nonresident administrator certificate of authority or license, if the Commissioner determines that, due to events or information obtained subsequent to the home state's licensure of the TPA, the nonresident TPA cannot satisfy the requirements of this Article or that grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license. If the Commissioner refuses to issue a certificate of authority of license pursuant to this section, the Commissioner shall give written notice of its determination to the Commissioner of the home state, and the Commissioner may delay the issuance of a nonresident administrator certificate of authority to the nonresident TPA until the Commissioner determines that the administrator can satisfy the requirements of this Article and that no grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license."

SECTION 1.11. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-72. Grounds for denial, suspension, or revocation of certificate of authority.**

(a) The certificate of authority or license of a TPA shall be denied, suspended, or revoked if the Commissioner finds that the TPA:

(1) Is in an unsound financial condition;

(2) Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this State hazardous or injurious to insured persons or the public; or

(3) Has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final.

(b) The Commissioner may, after notice and opportunity for hearing, deny, suspend, or revoke the certificate of authority or license of a TPA if the Commissioner finds that the TPA:

(1) Has violated any lawful rule or order of the Commissioner or any provision of the insurance laws of this State;

(2) Has refused to be examined or to produce its accounts, records, and files for examination, or if any individual responsible for the conduct of affairs of the TPA has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination when required by the Commissioner, including:

a. Members of the board of directors, board of trustees, executive committee, or other governing board or committee;

b. The principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company;

c. Any shareholder or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the TPA; and

d. Any other person who exercises control or influence over the affairs of the TPA;

(3) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the TPA to secure full payment or settlement of such claims;

(4) Fails, at any time, to meet any qualification for which issuance of the certificate could have been refused had the failure then existed and been known to the Commissioner;

(5) Or any of the individuals responsible for the conduct of its affairs has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether adjudication was withheld, including:

a. Members of the board of directors, board of trustees, executive committee or other governing board or committee;

b. The principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company;

c. Any shareholder or member holding directly or indirectly ten percent or more of its voting stock, voting securities, or voting interest; and

d. Any other person who exercises control or influence over its affairs;

(6) Is under suspension or revocation in another state; or

(7) Has failed to timely file its annual report pursuant to G.S. 58-56-62 if a resident administrator or its statement and filing fee, as applicable, pursuant to G.S. 58-56-67(d) and (e) if a nonresident administrator.

(c) The Commissioner may, without advance notice or hearing, immediately suspend the certificate of authority or license of a TPA if the Commissioner finds that one or more of the following circumstances exist:

(1) The TPA is insolvent or impaired.

(2) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the TPA has been commenced in any state.

(3) The financial condition or business practices of the TPA otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this State.

(d) If the Commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of authority issued under this part, the Commissioner may, in lieu of suspension or revocation, impose a fine upon the TPA."

SECTION 1.12. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-73. Prohibited practices.**

No person shall act as, offer to act as, or hold himself or herself out as a TPA in this State without a valid domestic or nonresident administrator certificate of authority issued by the Commissioner."

PART II. GROUP ANNUITY CONTRACTS

SECTION 2. G.S. 58-58-145 reads as rewritten:

"**§ 58-58-145. Group annuity contracts defined; ~~requirements.~~requirements; issuance of individual certificates.**

(a) Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable to more than one person, is a group annuity contract. The person, firm or corporation to whom or to which such contract is issued, as herein provided, is the holder of the contract. The term "annuitant" means any person to whom or which payments are made under the group annuity contract. No authorized insurer shall deliver or issue for delivery in this State any group annuity contract except upon a group of annuitants that conforms to the following: under a contract issued to an employer, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, the stipulated payments on which shall be paid by the holder of such contract either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the employees covered by such contract, and providing a plan of retirement annuities under a plan which permits all of the employees of such employer or of any specified class or classes thereof to become annuitants. Any such group of employees may include retired employees, and may include officers and managers as employees, and may include the employees of subsidiary or affiliated corporations of a corporation employer, and may include the individual proprietors, partners and employees of affiliated individuals and firms controlled by the holders through stock ownership, contract or otherwise.

(b) The insurer of a group annuity contract shall issue to the policyholder, within 30 days of the effective date of the group annuity contract, an individual certificate for delivery to each annuitant which:

(1) Identifies the annuity to which the annuitant is entitled.

(2) States the name of the person to whom the annuity is payable.

(3) Discloses all of the rights and obligations of the insurer, the policyholder, the annuitant, and the persons to whom the annuity is payable with respect to the group annuity contract.

G.S. 58-3-150 applies to the form of the individual certificate required by this subsection.

(c) Each group annuity contract shall include a provision that the insurer will issue to the policyholder within 30 days of the effective date of the contract, for delivery to each annuitant, an individual certificate setting forth the information described in subsection (b) of this section."

PART III. DISCLOSURES FOR ANNUITIES AND LIFE INSURANCE

SECTION 3. The title of Article 60 of Chapter 58 of the General Statutes reads as rewritten:

"Article 60.

~~Regulation of Life Insurance Solicitation.~~

Standards of Disclosure for Annuities and Life Insurance."

SECTION 3.1. Article 60 of Chapter 58 of the General Statues is amended by designating G.S. 58-60-1 through G.S. 58-60-35 as:

"Part 1. Regulation of Life Insurance Solicitation."

SECTION 3.2. G.S. 58-60-1 reads as rewritten:

"**§ 58-60-1. ~~Purpose of Article.~~Short title; purpose.**

(a) This Part may be cited as the "Life Insurance Disclosure Act".

(b) The purpose of this ~~Article~~ Part is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for ~~their~~ the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and to improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

This ~~Article~~ Part does not prohibit an insurer ~~to use~~ from using additional material ~~which~~ that is not in violation of Articles 1 through 64 of this Chapter nor any other statute or regulation."

SECTION 3.3. G.S. 58-60-5 reads as rewritten:

"**§ 58-60-5. ~~Scope of Article;~~ Scope; exemptions.**

(a) Except as otherwise provided in this ~~Article,~~ Part, this ~~Article~~ Part applies to any solicitation, negotiation or procurement of life insurance occurring within this State. This ~~Article~~ Part applies to any issuer of a life insurance contract, including fraternal benefit societies.

(b) Unless otherwise specifically included, this ~~Article~~ Part does not apply to:

(1) ~~Annuities,~~Individual group annuity contracts.

(2) Credit life ~~insurance,~~insurance.

(3) Group life ~~insurance,~~ insurance (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy).

(4) Life insurance policies issued in connection with pension and welfare plans as defined by and that are subject to the federal Employee Retirement Income Security Act of 1974 ~~(ERISA),~~(ERISA).

(5) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(c) The policy summary in this ~~Article~~ Part is not required for policies that are sold subject to rules adopted by the Commissioner for life insurance illustrations."

SECTION 3.4. G.S. 58-60-10(7)k. reads as rewritten:

"k. The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in subparagraph e of this paragraph shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space. If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor, it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in this State."

SECTION 3.5. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Home Service Life Insurance Solicitation.

"**§ 58-60-40. Title and reference.**

This Part may be cited as the "Home Service Disclosure Act".

"**§ 58-60-45. Purpose.**

The purpose of this Part is to establish standards that ensure that meaningful information is provided to the purchasers of insurance policies distributed through the home service distribution system.

"**§ 58-60-50. Definitions.**

As used in this Part:

(1) "Home service distribution system" means a system in which insurance products are marketed, sold, or serviced by agents in person in the home or business of the insured, owner, or premium payor in assigned territories and may be identified as "debits". The policies are issued on a monthly or more frequent premium payment basis and agents are charged with the responsibilities of servicing the debit, which may include the collection of premium payments in the home or designated location on a monthly or more frequent basis, along with other services normally rendered.

(2) "Small face amount life insurance policy" means an insurance policy or certificate with a face amount of fifteen thousand dollars ($15,000) or less.

"**§ 58-60-55. General disclosure requirements.**

(a) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80 and at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) Whether the policyholder is allowed to change the method of premium payment and any conditions for that change;

(2) Whether or not at a subsequent date a policyholder may combine multiple policies from the same insurance company, its affiliates, and its subsidiaries into one policy in order to provide like or enhanced coverage at a comparable or reduced premium to eliminate duplicate administrative costs associated with each policy and, if the option is available:

a. Whether a policyholder will be subject to underwriting when combining multiple policies into one policy; and

b. Whether a policyholder will be subject to a new contestable period, waiting periods, etc., when combining multiple policies into one policy.

(b) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80, an insurer issuing a small face amount life insurance policy through the home service distribution system shall provide the current disclosure included in Appendix A of the NAIC's Home Service Disclosure Model if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

If, for a particular policy form, the cumulative premiums may exceed the face for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefit attributable to the riders.

If an illustration has been provided that satisfies the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code, the disclosure requirements of subsection (b) of this section are deemed to have been met.

"**§ 58-60-60. Disclosure of payment methods.**

In accordance with the disclosure simplification standards set forth in G.S. 58-60-80, at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) What premium savings may be realized by a different method or less frequent mode of premium payment.

(2) That premiums are still due and payable by the person responsible for premium payments even when an agent does not collect the premiums.

(3) The mailing address for payment of premiums to the company.

(4) That the consumer is entitled to receive a receipt for premium payments when premium payments are made in cash or in person.

"**§ 58-60-65. Evidence of payment.**

For every premium collected on a policy of life or disability insurance marketed, sold, or serviced through the home service distribution system in this State, the agent, solicitor, or broker, or any employee acting on the agent, solicitor, or broker's behalf, collecting or receiving the premium in person shall:

(1) Maintain and furnish to the policyholder a receipt indicating payment of premiums, which shall provide the payor with clearly understandable, written evidence of payment at the time the premium is collected. At a minimum it shall clearly show:

a. The name of the payor.

b. The name of insured under each policy covered by the premium.

c. The amount paid.

d. The date paid.

e. The date paid-to-status of the policy.

f. The policy number.

g. The face amount and type of policy for which the payment will be credited.

h. The signature of the agent.

i. The agent's printed name and unique identification number.

j. The name, complete address, and phone number of the insurer.

(2) Remit to the insurer's home office or applicable district office, or deposit in a fiduciary account, the premium collected on behalf of the policyholder within 10 days of receipt from the premium payor or policy owner. In the event that the insurer utilizes an accounting system based on a monthly list bill, all premiums collected shall be credited from the date of collection. The premium shall be fully applied to that particular account.

"**§ 58-60-70. Proof of policy delivery.**

If an insurance policy marketed, sold, or serviced through the home service distribution system is delivered by an agent, solicitor, or broker, or an employee acting on the agent, solicitor, or broker's behalf, a receipt shall be signed by the purchaser and the agent acknowledging delivery to the purchaser of the policy or contract and the disclosures required by this Part. The receipt shall contain the name of the purchaser, the policy or contract number, the amount of the initial premium payment, and the date the delivery was completed. A policy shall be deemed to have been received six months after the date of issuance if the insured has paid premiums pursuant to the contract. All delivery receipts required by this section shall be retained by the company for not less than three years following delivery and shall be available for inspection upon request of the Commissioner.

"**§ 58-60-75. Company duties.**

Each insurer engaged in the home service distribution system in this State shall make available to the Commissioner for review:

(1) Established written procedures to audit agencies engaged in the home service system of distribution of policies in this State; and

(2) Proof of audits conducted periodically that reasonably ensure that the premium payor's records accurately reflect the premium due date and premium paid-to-status of the policy or policies purchased.

"**§ 58-60-80. Minimum disclosure language standards.**

All disclosure forms shall comply with the readability standards in Article 38 of this Chapter. It is presumed the disclosure form in Appendix A of the NAIC's Home Service Disclosure Model Act complies with this Part."

SECTION 3.6. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Small Face Amount Life Insurance Solicitation.

"**§ 58-60-85. Title and reference.**

This Part may be cited as the "Small Face Amount Life Insurance Disclosure Act".

"**§ 58-60-90. Purpose; intent; and scope.**

(a) The purpose of this Part is to establish standards that ensure meaningful information is provided to the purchasers of small face amount policies.

(b) This Part applies to any life insurance policy or certificate with an initial face amount of fifteen thousand dollars ($15,000) or less.

(c) This Part does not apply to:

(1) Variable life insurance.

(2) Individual and group annuity contracts.

(3) Credit life insurance.

(4) Group or individual policies of life insurance issued to members of an employer group or other permitted group where:

a. Every plan of coverage was selected by the employer or other group representative;

b. Some portion of the premium is paid by the group or through payroll deduction; and

c. Group underwriting or simplified underwriting is used.

(5) Policies and certificates where an illustration has been provided pursuant to the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code.

"**§ 58-60-95. Disclosure requirements.**

(a) An insurer issuing a small face amount policy shall provide the current disclosure included in Appendix A of the NAIC Disclosure for Small Face Amount Life Insurance Policies Model Act if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

(b) If, for a particular policy form, the cumulative premiums may exceed the face amount for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

(c) Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefits attributable to the riders.

"**§ 58-60-100. Insurer duties.**

The insurer and its producers shall have a duty to provide information to policyholders or certificate holders that ask questions about the disclosure statement."

SECTION 3.7. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 4. Regulation of Annuity Solicitation.

"**§ 58-60-105. Title and reference.**

This Part may be cited as the "Annuity Disclosure Act".

"**§ 58-60-110. Purpose; intent; scope.**

(a) The purpose of this Part is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. This Part specifies the minimum information that must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this Part is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

(b) This Part applies to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products.

(2) Immediate and deferred annuities that contain no nonguaranteed elements.

(3) Annuities used to fund:

a. An employee pension plan, which is covered by the Employee Retirement Income Security Act (ERISA);

b. A plan described by section 401(a), 401(k), or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

c. A governmental or church plan defined in section 414, or a deferred compensation plan of a state or local government or a tax exempt organization under section 457, of the Internal Revenue Code;

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

e. Structured settlement annuities;

f. Charitable gift annuities; or

g. Funding agreements.

(c) This Part shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement.

"**§ 58-60-115. Definitions.**

As used in this Part:

(1) "Annuity buyer's guide" or "buyer's guide" means the current NAIC Model Buyer's Guide to Fixed Deferred Annuities, including any appendix thereto.

(2) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only or from both determinable and guaranteed elements.

(5) "Disclosure document" means the document the contents of which are described in G.S. 58-60-125.

(6) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(7) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity".

(8) "Guaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(9) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(10) "Structured settlement annuity" means a "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

"**§ 58-60-120. Standards for the disclosure document and buyer's guide.**

(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant, at or before the time of application, shall be given both the disclosure document described in G.S. 58-60-125 and a copy of the buyer's guide.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the buyer's guide no later than five business days after the completed application is received by the insurer.

(1) With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a buyer's guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(2) With respect to an application received via the Internet:

a. Taking reasonable steps to make the buyer's guide available for viewing and printing on the insurer's web site shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's web site shall be deemed to satisfy the requirement that the disclosure

document be provided no later than five business days after receipt of the application.

(3) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the Department for a free annuity buyer's guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity buyer's guide.

(c) Where the buyer's guide and disclosure document are not provided at or before the time of application, a free look period of no less than 15 days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under State law or regulation.

"**§ 58-60-125. Contents of disclosure document.**

At a minimum, all of the following information shall be included in the disclosure document required under this Part:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity.

(2) The insurer's name and address.

(3) A description of the contract and its benefits, emphasizing its long-term nature, including the following, if appropriate:

a. The guaranteed, nonguaranteed, and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate.

b. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed.

c. Periodic income options both on a guaranteed and nonguaranteed basis.

d. Any value reductions caused by withdrawals from or surrender of the contract.

e. How values in the contract can be accessed.

f. The death benefit, if available, and how it will be calculated.

g. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract.

h. The impact of any rider, such as a long-term care rider.

(4) The specific dollar amount or percentage charges and fees with an explanation of how they apply.

(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

"**§ 58-60-130. Report to contract owners.**

For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least all of the following information:

(1) The beginning and end date of the current report period.

(2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period.

(3) The total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period.

(4) The amount of outstanding loans, if any, as of the end of the current report period."

PART IV. EMPLOYER-OWNED LIFE INSURANCE DISCLOSURE

SECTION 4. G.S. 58-58-75 reads as rewritten:

"**§ 58-58-75. Insurable interest in life and physical ability of employee or agent.**

(a) An employer, whether a partnership, joint venture, business trust, mutual association, corporation, any other form of business organization, or one or more individuals, or any religious, educational, or charitable corporation, institution or body, has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an employee for the benefit of such employer. Any principal shall have a life insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an agent for the benefit of such principal.

(b) An employee described in subsection (a) of this section shall be insured for the benefit of an employer described in subsection (a) of this section only if the employee receives written notification from the insurer of the existence of the coverage. The notice shall be provided to the employee within 30 days after the effective date of the coverage and shall include a statement that the employer may maintain the life insurance coverage on the employee even after employment is terminated.

(c) For nonkey or nonmanagerial employees, the aggregate amount of coverage shall be reasonably related to the benefits provided to the employees in the aggregate.

(d) With respect to employer-provided pension and welfare plans, the life insurance coverage purchased to finance the plans may only cover the lives of those employees and retirees who, at the time their lives were first insured under the plan, either are participants, or would be eligible to participate, upon the satisfaction of age, service, or similar eligibility criteria in the plan."

PART V. ACTUARIALLY SOUND ASSOCIATION GROUP ACCIDENT AND HEALTH PREMIUM RATES

SECTION 5. G.S. 58-51-80(1a) reads as rewritten:

"(1a) Under a policy issued to an association or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of 500 persons and shall have been

organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least five years; and shall have a constitution and bylaws that provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members; (ii) except for credit unions, the association or associations collect dues or solicit contributions from members; and (iii) the members, other than associate members, have voting privileges and representation on the governing board and committees. The policy is subject to the following requirements:

a. The policy may insure members of the association or associations, employees of the association or associations, or employees of members, or one or more of the preceding or all of any class or classes for the benefit of persons other than the employee's employer.

b. The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members. The premium rates for each association policy shall be developed, and applied to the certificates thereunder, on an actuarially sound basis.

c. Repealed by Session Laws 1997-259, s. 8."

PART VI. INDIVIDUAL ACCIDENT AND HEALTH INSURANCE RENEWAL RATE LIMITATIONS

SECTION 6. G.S. 58-51-95 is amended by adding a new subsection to read:

"(g) For policies subject to this section, an individual health insurer shall not increase an individual's renewal premium for continued health insurance coverage under the terms of the individual's health insurance policy based on any health status-related factors in relation to the individual or a dependent of the individual, including:

(1) Health status.

(2) Medical condition (including both physical and mental illnesses).

(3) Claims experience.

(4) Receipt of health care.

(5) Medical history."

PART VII. LARGE GROUP HEALTH INSURANCE SOLE PROPRIETOR EXEMPTION

SECTION 7. G.S. 58-65-60 is amended by adding a new subsection to read:

"(e3) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 7.1. G.S. 58-67-85 is amended by adding a new subsection to read:

"(d1) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(1), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 7.2. G.S. 58-51-80(c) reads as rewritten:

"(c) The term "employees" as used in this section shall be deemed to include, for the purposes of insurance hereunder, employees of a single employer, the officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. Employees shall be added to the group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term "employee" is defined as a nonseasonal person who works on a full-time basis, with a normal work week of 30 or more hours and who is otherwise eligible for coverage, but does not include a person who works on a part-time, temporary, or substitute basis. The term "employer" as used herein may be deemed to include the State of North Carolina, any county, municipality or corporation, or the proper officers, as such, of any unincorporated municipality or any department or subdivision of the State, county, such corporation, or municipality determined by conditions pertaining to the employment. When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

PART VIII. NEWBORN COVERAGE REINSTATEMENT

SECTION 8. G.S. 58-51-30(b) reads as rewritten:

"(b) Every health benefit plan, as defined in ~~G.S. 58-3-167,~~ G.S. 58-51-115(a)(1), that provides benefits for any sickness, illness, or disability of any minor child or that provides benefits for any medical treatment or service furnished by a health care provider or institution to any minor child shall provide the benefits for those occurrences beginning with the moment of the child's birth if the birth occurs while the plan is in force. Every health benefit plan shall extend coverage to a newborn child without requirements for prior notification unless an additional premium charge to add the dependent is due. If an additional premium charge is due to cover the dependent, the health benefit plan shall cover the newborn child from the moment of birth if the newborn is enrolled within 30 days after the date of birth. Foster children and adopted children shall be treated the same as newborn infants and eligible for coverage on the same basis upon placement in the foster home or placement for adoption. Every health benefit plan shall extend coverage to a foster child or adopted child without

requirements for prior notification unless an additional premium charge to add the foster child or adopted child is due. If an additional premium charge is due to cover the foster child or adopted child, the health benefit plan shall cover the foster child or adopted child upon placement in the foster home or placement for adoption if the foster child or adopted child is enrolled within 30 days after the placement in the foster home or placement for adoption."

PART IX. LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES TECHNICAL CORRECTIONS

SECTION 9. G.S. 58-51-15(a)(2)b. reads as rewritten:

"b. This policy contains a provision limiting coverage for preexisting conditions. Preexisting conditions are covered under this policy _____ (insert number of months or days; not to exceed one year) after the effective date of coverage. Preexisting conditions mean "those conditions for which medical advice, diagnosis, care, or treatment was received or recommended within the one-year period immediately preceding the effective date of the person's coverage." ~~Credit~~ Except for the excepted benefits described in G.S. 58-68-25(b), credit for having satisfied some or all of the preexisting condition waiting periods under previous health benefits coverage shall be given in accordance with G.S. 58-68-30."

SECTION 9.1. G.S. 58-51-15(h) reads as rewritten:

"(h) Preexisting Condition Exclusion Clarification. – Sub-subdivision (a)(2)b. of this section does not apply ~~to:~~ to

~~(1)~~ ~~Policies~~ policies issued to eligible individuals under G.S. 58-68-60.

~~(2)~~ ~~Excepted benefits as described in G.S. 58-68-25(b).~~"

PART X. SMALL EMPLOYER HEALTH REINSURANCE POOL BOARD AMENDMENTS

SECTION 10. G.S. 58-50-150(b) reads as rewritten:

"(b) Within 30 days after January 1, 1992, the Commissioner shall give notice to all carriers of the time and place for the initial organizational meeting, which shall take place within 90 days after the notice from the Commissioner. The members shall select the initial Board, subject to the Commissioner's approval. The Board shall consist of nine six members. There shall be no more than two members of the Board representing any one carrier. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. The voting rights to determine initial Board membership shall be weighted based upon net group health benefit plan premium derived from this State in the previous calendar year. Thereafter, voting Voting rights shall be based on net group health benefit plan premium derived from small employer business. The Board shall at all times, to the extent possible, include at least one domestic insurance company licensed to transact accident and health insurance, one HMO, one nonprofit hospital or medical service plan. Six Five of the

members of the Board shall be small employer carriers. In approving selection of the Board, the Commissioner shall assure that all members are fairly represented."

PART XI. EQUITABLE ENROLLMENT PERIOD FOR SUPPLEMENTAL MEDICARE PLANS

SECTION 11. G.S. 58-54-45(a) reads as rewritten:

"(a) In addition to any rule adopted under this Article that is directly or indirectly related to open enrollment, an insurer shall at least make standardized Medicare Supplement Plans A, C, and J available to persons eligible for Medicare by reason of disability before age 65. This action shall be taken without regard to medical condition, claims experience, or health status. To be eligible, a person must submit an application during the six-month period beginning with the first month the person first enrolls in Medicare Part B. For those persons that are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision."

PART XII. REVOCATION AND SUSPENSION TECHNICAL CORRECTION

SECTION 12. G.S. 58-3-100(c) reads as rewritten:

"(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgement of the claim shall be one of the following:

(1) A statement made to the claimant or to the claimant's legal representative advising that the claim is being investigated.
(2) Payment of the claim.
(3) A bona fide written offer of settlement.
(4) A written denial of the claim.

A claimant includes an insured, a beneficiary of life or annuity contract, a health care provider, or a health care facility that is responsible for directly making the claim with an insurer, HMO, service corporation, or MEWA. With respect to a claim under an accident, health, or disability policy, if the acknowledgement sent to the claimant indicates that the claim remains under investigation, within 45 days after receipt by the insurer of the initial claim, the insurer shall send a claim status report to the insured and every 45 days thereafter until the claim is paid or denied. The report shall give details sufficient for the insured to understand why processing of the claim has not been completed and whether the insurer needs additional information to process the claim. If the claim acknowledgement includes information about why processing of the claim has not been completed and indicates whether additional information is needed, it may satisfy the requirement for the initial claim status report. This subsection does not apply to HMOs, service corporations, MEWAs or insurers subject to G.S. 58-3-225."

PART XIII. HEALTH BENEFIT PLAN TRAVEL EXPENSES COVERAGE

SECTION 13. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-270. Insurance coverage for travel expenses associated with obtaining care.**

(a) As used in this section, the terms "health benefit plan" and "insurer" have the meaning as found in G.S. 58-3-167.

(b) Each health benefit plan shall provide coverage for reasonable transportation, lodging, and boarding expenses incurred by a covered person to access covered health care services when the insurer, through its referral or network contracting arrangements, requires the covered person to travel more than 250 miles from the covered person's residence to obtain those covered health care services from a network provider.

(c) The coverage specified by this section is limited to transportation, lodging and boarding expenses incurred by a covered person when required by the health plan to travel to access covered health care services as provided in subsection (b) of this section when those health care services are not also available from a network provider who is located within 250 miles of the covered person's residence.

(d) The coverage required by this section shall be subject to plan requirements including any overall health care benefit plan aggregate limitations and shall last for the duration of the health care benefit plan's coverage of the treatment subject to this section. An insurer may utilize a per diem limit for the expenses specified in subsection (c) of this section as long as the limit reflects the high-low per diem method as annually published by the Internal Revenue Service or the Domestic Per Diem Rate as published annually by the federal General Services Administration in the area where the health care services are being obtained. All travel, lodging, and boarding expenses in excess of the insurer's per diem or the health benefit plan's aggregate limits shall be the responsibility of the covered person.

(e) An insurer may require prior approval of all expenses subject to this section.

(f) The coverage required by this section shall apply only to those travel, lodging, and boarding expenses incurred by the covered person accessing covered health care services in accordance with this section. If the covered person accessing covered health care services in accordance with this section is a minor, the health benefit plan shall also cover the expenses specified in subsection (c) of this section for a parent or guardian who accompanies the minor."

PART XIV. CREDIT INSURANCE AMENDMENTS

SECTION 14. G.S. 58-57-5 is amended by adding a new subdivision to read:

"(5a) "Critical period coverage" means insurance coverage for which benefits are limited to a stated number of payments or the payments end with the expiration of the policy, whichever is less."

SECTION 14.1. G.S. 58-57-50(b) reads as rewritten:

"(b) The refund of premiums for decreasing term credit life insurance shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy. The refund of premiums for ~~decreasing term credit life insurance~~

~~in transactions of 60 months duration or less and the refund of premiums for~~ single interest credit property insurance and single interest physical damage insurance shall be equal to the amount computed by the sum of digits formula known as the "Rule of 78." ~~The refund of premiums for decreasing term credit life insurance in transactions of more than 60 months duration shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy.~~ The refund of premiums for level term credit life insurance and dual interest credit property insurance and dual interest physical damage insurance shall be equal to the pro rata unearned gross premiums."

SECTION 14.2. G.S. 58-57-55 reads as rewritten:

"**§ 58-57-55. Issuance of policies.**

All policies of credit life insurance and credit accident and health insurance shall be issued only by an insurer authorized to do business in this State and shall be issued only through holders of licenses or authorizations issued by the Commissioner. ~~All~~ With the exception of credit insurance issued in accordance with G.S. 58-57-105, all policies of credit life insurance and credit accident and health insurance shall be delivered or issued for delivery in this ~~State only by an insurer authorized to do an insurance business therein, and shall be issued only through holders of licenses or authorizations issued by the Commissioner.~~ State. The enrollment of debtors under a group policy issued to a creditor and authorized under this Article shall not constitute the issuance of a policy of insurance."

SECTION 14.3. G.S. 58-57-60 is amended by adding a new subsection to read:

"(d) A claim acknowledgement shall be sent to the claimant within 30 days after receiving written or electronic notice of the claim. Acknowledgement shall include the following:

(1) A statement made to the insured or the claimant advising that the claim is being investigated.

(2) Payment of the claim.

(3) A bona fide written offer of settlement.

(4) A written denial of the claim."

SECTION 14.4. G.S. 58-57-110 reads as rewritten:

"**§ 58-57-110. Credit unemployment insurance rate standards; policy provisions.**

(a) Each year the Commissioner shall prescribe a minimum incurred loss ratio standard requirement to develop a premium rate reasonable in relation to the benefits provided by credit unemployment insurance coverage. The following requirements must be met:

(1) Coverage is provided or offered, with or without underwriting, to all debtors regardless of age who are working for salary, wages, or other employment income for at least 30 hours per week and have done so for 12 consecutive months;

(2) Coverage sets forth a definition of involuntary unemployment as a loss of employment income that may include, but is not limited to, loss caused by layoff, general strike, termination of employment, or lockout;

(3) Coverage does not contain any exclusion except: debts with irregular monthly payments; voluntary forfeiture of salary, wages, or other employment income; resignation; retirement; sickness, disease, or normal pregnancy; or loss of income due to termination as a result of willful misconduct that is a violation of some established, definite rule of conduct, a forbidden act, or willful dereliction of duty, or criminal ~~misconduct.~~misconduct;

(4) As long as there is no required time period limitation for registration, the insured may be required to register with the State unemployment office in order to qualify for benefit payments under the credit unemployment coverage. Qualification for State unemployment benefits shall not be required in order to qualify for benefit payments under the credit unemployment coverage.

(b) The Commissioner may approve other policy provisions and coverages consistent with the purposes of unemployment coverage.

(c) Joint coverage rates for credit unemployment insurance shall be one and two-thirds (1 2/3) times the approved single rate of coverage.

(d) The refund provision for credit unemployment insurance shall be equal to the pro rata unearned gross premium."

PART XV. MEDICARE SUPPLEMENTAL INSURANCE POLICY CHANGES

SECTION 15. G.S. 58-54-25(f) reads as rewritten:

"(f) No insurer shall use attained age as a structure or methodology for its Medicare supplement insurance rates. ~~rates unless the structure or methodology is fully disclosed to the applicant at the time of application or to the insured at the time of delivery if the purchase is by mail order. All types of solicitation materials shall clearly indicate that the premiums are based on attained age, which means that those premiums will increase each year. The Commissioner shall prescribe by rule the format and content of the attained age rating disclosure notice. The notice shall include:~~

~~(1) A statement that attained age rating means that rates increase as the insured ages or by the age group in which the insured is.~~

~~(2) An illustration based on actual attained age that states the dollar amount of premium increase for the insured over a period of not less than 10 policy years and that displays the life expectancy of the insured at the beginning of the period.~~

~~(3) A statement that premiums for other Medicare supplement policies that are on issue age bases do not increase as the insured ages.~~

~~(4) A statement that other Medicare supplement policies that are on issue age bases should be compared to policies on attained age bases.~~"

SECTION 15.1 G.S. 58-54-10 reads as rewritten:

"**§ 58-54-10. Standards for policy provisions.**

(a) No policy in force in this State shall contain benefits that duplicate benefits provided by Medicare.

(b) The Commissioner shall adopt rules to establish specific standards for provisions of policies. Such standards shall be in addition to and in accordance with applicable State law. No requirement of State law relating to minimum required policy benefits, other than the minimum standards contained in this Article, applies to policies. The standards may include without limitation to: terms of renewability; initial and subsequent conditions of eligibility; nonduplication of coverage; probationary periods; benefit limitations, exceptions, and reductions; elimination periods; requirements for replacement; recurrent conditions; and definitions of terms.

(c) The Commissioner may adopt rules that specify prohibited policy provisions not otherwise specifically authorized by State law that, in the opinion of the Commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a policy.

(d) Notwithstanding any other provision of State law, a policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. A policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(e) Repealed by Session Laws 1991 (Regular Session, 1992), c. 815, s. 3.

(f) An insurer shall use issue age as a structure or methodology for its Medicare supplement insurance rates. An insurer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the Commissioner.

(g) Except as otherwise provided in this subsection, an insurer shall not file for approval with the Commissioner more than one policy or certificate of each type for each standard policy. An insurer may offer, with the approval of the Commissioner, up to four additional policies or certificates of the same type for the same standard policy, one for each of the following:

(1) The inclusion of new or innovative benefits.

(2) The addition of either direct response or agent marketing methods.

(3) The addition of either guaranteed issue or underwritten coverage.

(4) The offering of coverage to individuals eligible for Medicare by reason of disability.

As used in this section, "type" means an individual policy, a group policy, an individual Medicare select policy, or a group Medicare select policy.

(h) Except as otherwise provided in this subsection, an insurer shall continue to make available for purchase any policy or certificate issued on and after January 1, 2004 that has been approved by the Commissioner. A policy or certificate shall not be considered to be available for purchase unless the insurer has actively offered the policy or certificate for sale in the immediately preceding 12 month period.

(i) An insurer may discontinue the availability of a policy or certificate if the insurer provides to the Commissioner in writing its decision to discontinue at least 30 days prior to the effective date of the discontinuance. Upon providing notice to the Commissioner, the insurer shall no longer offer for sale the policy or certificate in this State. An insurer that discontinues the availability of a policy or certificate pursuant to

this subsection shall not file for approval a new policy or certificate of the same type for the same standard Medicare supplement policy as the discontinued policy or certificate for a period of five years from the effective date of the discontinuance. The period of discontinuance may be reduced if the Commissioner determines that a shorter period is appropriate. The following shall be considered a discontinuance under this subsection:

(1) The sale or transfer of the insurer's Medicare supplement business to another insurer.

(2) A change in the rating structure or methodology of the policy or certificate unless:

a. The insurer provides actuarial memorandum, in a form and manner prescribed by the Commissioner, describing the manner in which the revised rating structure or methodology and resultant rates differ from the existing rating structure or methodology and rates, and

b. The insurer does not subsequently put into effect a change of rates or rating factors that would cause a change in the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum. The Commissioner may approve a change to the differential if the Commissioner finds the change to be in the public interest."

PART XVI. EFFECT OF HEADINGS, SEVERABILITY, AND EFFECTIVE DATES

SECTION 16. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SECTION 16.1. If any section or provision of this act is declared unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional, preempted, or otherwise invalid.

SECTION 16.2. Section 1 of this act becomes effective October 1, 2005. Sections 2 through 8 and Sections 9, 9.1, 13, 14, 14.1, 14.2, 14.3, 14.4, 15, and 15.1 of this act become effective January 1, 2004, and apply to policies or certificates issued or renewed on or after that date. The remainder of this act is effective when it becomes law and applies to policies or certificates issued or renewed on or after that date.

HOUSE BILL 339:
Life and Health Omnibus-AB

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Wright
Date:	June 3, 2003	**Summary by:**	Tim Hovis
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: House Bill 339 makes numerous substantive and technical changes to laws governing the regulation of insurance including:

Conforms Article 56 of Chapter 58 governing third party administrators, to the National Association of Insurance Commissioners (NAIC) model act on third party administrators.

Amends G.S. 58-58-145 which defines group annuity contracts, to require the insurer of such contracts to issue individual certificates of coverage to each annuitant.

Amends current disclosure requirements regarding the solicitation of life insurance products and annuities.

Amends G.S. 58-58-75 which gives a principle or an employer an insurable interest in the life or physical ability of an employee or agent, to require insurers to notify employees of the existence of such policies.

Amends G.S. 58-51-80 which defines group accident and health insurance, to require that association premium rates for accident and health insurance be actuarially sound and that associations be rated as a single group when the coverage provided is not employer-based.

Amends G.S. 58-51-95 to limit an insurer's ability to use an individual's own claims' experience when developing the individual's renewal rates on individual health insurance policies.

Amends G.S. 58-65-60 governing subscribes' contracts, to exempt a sole proprietor from the full-time basis or the 30-hour workweek requirements to be eligible for large group health coverage like the proprietor's full-time employees.

Adds a new section to Article 3 to require group health insurers for an employer to provide upon the policyholders' request, the group's experience information.

Amends G.S. 58-54-45 governing the issuance of Medicare Supplement Plans by reason of disability, to require insurer to allow persons retroactively enrolled in Medicare Part B the same six-month open enrollment period for Medicare Supplemental Plans as person enrolled in Medicare Part B without a retroactive effective date of coverage.

Adds a new section to Article 3 to require health benefit plans to provide coverage for designated travel expenses when the required distance traveled threshold is met.

Section 1 of the act becomes effective October 1, 2005. The remainder of the act (except for sections 10-12) becomes effective January 1, 2004. Sections 10, 11, and 12 (which include technical corrections) become effective when the act becomes law.

BILL ANALYSIS: Frank Folger, from the Department of Insurance provided the following section-by-section explanation.

PART I. THIRD PARTY ADMINISTRATOR REWRITE (Sections 1 –1.12). This part adopts the NAIC model statute, which provides reciprocity, among other benefits.

Section 1. Repeals the existing definitions section for Article 56 – Third Party Administrators- G.S. 58-56-2.

Section 1.1 enacts new G.S. 58-56-2 with revised and expanded definitions. Added terms include "insurance producer", "nonresident administrator" and "Uniform Application".

Section 1.2 makes technical clarifying changes to the wording of G.S. 58-56-6., governing the written agreement requirements.

Section 1.3 rewrites and reorganizes portions of G.S. 58-56-16 regarding Commissioner access to third party administrator (TPA) books and records and adds new subsections (e) through (i) to:

- Provide that TPA records and books in the possession or control of the Commissioner are confidential and privileged, not public record, not subject to discovery, not subject to subpoena, and inadmissible in evidence in any private civil action; and provide that immunity from testifying on the documents applies to the Commissioner and anyone receiving that material while acting under the authority of the Commissioner.
- Provide that the Commissioner can share such material with and receive such material from other state, federal and international regulatory and law enforcement agencies and the NAIC, provided it is agreed the confidentiality and privilege will be maintained; and can enter into agreements governing the sharing of such material consistent with the rules in that subsection.
- Provide that disclosure by the Commissioner does not constitute waiver of the privilege or claim of confidentiality;
- Clarify that the confidentiality and privilege requirements do not restrict the Commissioner from releasing final adjudicated action including for cause terminations.

Section 1.4. Repeals the existing TPA licensing statute.

Section 1.5. Enacts new G.S. 58-56-52. Home state certificate of authority or license. This new statute:

- Provides for licensure or issuance of a certificate of authority by a TPA's home state (as defined in G.S. 58-56-3) upon application using the Uniform Application and submission of a $100 filing fee. The Uniform Application must include or be accompanied by designated organizational documents, bylaws and internal regulatory documents, NAIC Biographical Affidavits for the officers, directors and all individuals responsible for the conduct of the affairs of the applicant, audited financial statements, a description of the business plan of the TPA, and any other pertinent information..
- Requires the TPA to provide for inspection and examination by the Commissioner all TPA contracts with insurers or others using the TPA's services and all accounts, records and files.
- Authorizes the Commissioner to refuse to issue a certificate of authority or license to a TPA upon determining that the TPA or any individual responsible for conducting the affairs of the TPA:
  - Is not competent
  - Is not trustworthy

- Is not financially responsible
- Is not of good personal and business reputation
- Has had an insurance or an administrator certificate of authority or license denied or revoked for cause by any jurisdiction
- Or upon determining that any of the grounds for denial, suspension or revocation of a certificate of authority under G.S. 58-56-72 exists.

- Provides for the perpetuity of a license or certificate of authority.
- Requires the TPA to notify the Commissioner of any material change in change of ownership, control, or other fact or circumstance affecting its qualification for a certificate of authority or license and requires the Commissioner to notify the producer database maintained by the NAIC or its affiliates or subsidiaries.

Section 1.6. Repeals the existing provision on waiver of application for license, G.S. 58-56-56.

Section 1.7. Enacts new G.S.58-56-57. Registration requirement, to require any person underwriting, collecting charges or premiums from, or adjusting or settling claims on NC residents in connection with a self-funded plan for life, health or annuity coverage to register annually with the Commissioner.

Section 1.8. Enacts new G.S. 58-56-62 to require each TPA licensed under G.S. 58-56-52 to file an annual report, including an independent CPA-audited financial report verified by at least two officers of the TPA with contents and format as prescribed by the Commissioner. The annual report must include the names and addresses of all the insurers with which the TPA has contracted in the past fiscal year and must be submitted along with an annual $100 filing fee. The Commissioner must review the annual report before September 1 of each year and either certify that, according to the annual report, the TPA has a positive net worth and is in good standing, or note any deficiencies found in the annual report; or update the aforementioned NAIC electronic database consistent with the Commissioner's review and assessment.

Section 1.9. Repeals existing G.S. 58-56-66 Grounds for suspension or revocation of license.

Section 1.10. Enacts new G.S. 58-56-67. Nonresident administrator certificate of authority, which:

- Requires any TPA performing TPA services in N.C. that does not carry a N.C. license or certificate of authority to file a Uniform Application with the Commissioner accompanied by certificate or license from the TPA's home state and that state has adopted the NAIC Third Party Administrator Statute or substantially similar laws governing TPAs in order to obtain a nonresident administrator certificate of authority for N.C.
- Requires a $100 filing fee as part of the application process.
- Subject the nonresident TPA to examination of its accounts, records, and files by the Commissioner.
- Exempts from the requirements of a nonresident certificate of authority nonresident TPAs that only perform administrator services on a group policy or plan with no more 100 insureds residing in N.C.
- Authorizes the Commissioner to refuse to issue a nonresident certificate of authority if the Commissioner determines that events or information obtained following the licensure of the TPA in its home state, the TPA cannot satisfy the requirements of Article 56 or

grounds exist for the home state's suspension or revocation of the TPA's license or certificate.

Section 1.11. Enacts new G.S. 58-56-72 to require denial, suspension or revocation of certificate of authority if the Commissioner finds the TPA:

- Is financially unsound
- Is using methods or practices rendering its future transactions hazardous or injurious to insured persons or the public.
- Has failed to pay any judgment rendered against it in N.C. within 60 days after the judgment has become final.

The Commissioner, after notice and hearing, may deny, suspend, or revoke the certificate of authority or license if the Commissioner finds the TPA:

- Has violated any lawful rule or order of the Commissioner or any provision of the N.C. insurance laws.
- Or any person or entity exercising control of the TPA has refused to cooperate with examination by the Commissioner.
- Has, without cause, refused to pay proper claims or fulfill its contractual obligations.
- Fails to satisfy, at any time, the conditions upon which the license or certificate of authority was initially granted.
- Or any of the individuals responsible for the conduct of the TPA enters a plea of guilt or nolo contendere or is found guilty of a felony.
- Is under suspension or revocation in another state.
- Has failed to timely file its annual report pursuant to G.S. 58-56-62 if a resident TPA or its statement and filing fee, as applicable, if a nonresident administrator.

The Commissioner may without advance notice or hearing, immediately suspend the certificate of authority or license if the Commissioner finds that one or more of the following circumstances exist:

- The TPA is insolvent or impaired.
- A proceeding for receivership, rehabilitation or other delinquency proceeding has been instituted in any state.
- The TPA's financial condition or business practices pose an imminent threat to the public health, safety or welfare of N.C. citizens.

The Commissioner may impose a fine in lieu of suspension or revocation.

Section 1.12. Prohibits acting as a TPA in N.C. without a resident certificate of authority or a non-resident certificate of authority.

PART II. GROUP ANNUITY CONTRACTS

Section 2. Amends G.S. 58-58-145 requires group annuity insurers to issue certificates of coverage to each annuitant via the policyholder on a form approved by the Commissioner.

PART III. DISCLOSURES FOR ANNUITIES AND LIFE INSURANCE

Sections 3. through 3.7. Adopts the new NAIC models on Annuity, Home Service Life Insurance and Small Face Amount Life Insurance Disclosure and updates our current life insurance disclosure provisions in Article 60 of Chapter 58 to reflect the current NAIC Life Insurance Disclosure model act.

This Part reorganizes Article 60 to create a life insurance and annuity product disclosure article, with separate parts for each different product disclosure requirement. Each model specifically addresses disclosure requirements to assist the consumer when making a purchasing decision by requiring notice of the feature, including potentially negative aspects of each product. For example:

(1) Sellers of small face life insurance (insurance with a face amount less than $15,000) would have to disclose up front that premiums paid-in could exceed the face value of the policy, if that is a possibility at any time;

(2) Sellers of life insurance through the home service distribution system must disclose whether the policyholder is allowed to change the method of premium payment, whether the policyholder can combine multiple policies from the same company or its affiliates or subsidiaries into one policy and what the impact, if any, such a consolidation would have regarding underwriting, waiting periods, contestable periods and the like, and they would have to provide and maintain evidence of payment of premiums; and

(3) Sellers of annuities would have to provide to the applicant for an annuity a copy of the NAIC Model Guide to Fixed Deferred Annuities and a disclosure document, containing information on the insurer, specifics of the contract including its long-term nature, the specific amount of charges applicable to the contract, and information on the variability of guaranteed rates and the current guaranteed rate.

PART IV. EMPLOYER OWNED LIFE INSURANCE DISCLOSURE

Section 4. Amends G.S. 58-58-75 to require employers that purchase life insurance policies on the lives of their employees for the benefit of the employer to disclose that practice to its employees within 30 days of the effective date of the coverage and also notify the employees that the policy can be maintained even after termination of employment with the employer.

Part V. Requires association group accident and health premium rates to be actuarially sound and to rate associations as a single group when the coverage is not employer based.

This Part reorganizes Article 60 to create a life insurance and annuity product disclosure article, with separate parts for each different product disclosure requirement. Each model specifically addresses disclosure requirements to assist the consumer when making a purchasing decision by requiring notice of the potentially negative aspects of each product. For example: sellers of small face life insurance (insurance with a face amount less than $15,000) would have to disclose that premiums paid in could exceed the face value of the policy.

Part IV. EMPLOYER-OWNED LIFE INSURANCE DISCLOSURE

Section 4. Amends G.S. 58-58-75 to require employers that purchase life insurance policies on the lives of their employees for the benefit of the employer to disclose that practice to its employees within 30 days of the effective date of the coverage and, if applicable, that these employer-owned life insurance (sometimes referred to as COLI for "corporate-owned life insurance") policies can be maintained after the employment has terminated.

Part V. ACTUARIALLY SOUND ASSOCIATION GROUP ACCIDENT AND HEALTH PREMIUM RATES.

Section 5. Amends G.S. 58-51-80 to requires association group accident and health premium rates to be actuarially sound and to rate associations as a single group when the coverage is not employer based in order to prevent reunderwriting practices in which insurers are re-rating individual members in (non-employer based) associations as single one man groups each, rather than using the entire association's experience to determine renewal rates.

Part VI. INDIVIDUAL ACCIDENT AND HEALTH INSURANCE RENEWAL RATE LIMITATIONS

Section 6. Amends G.S. 58-51-95 to limits an individual accident and health insurer's ability to determine an individual's renewal rate based on the individual's health status-related factors including: health status; medical condition (including both physical and mental illnesses); claims' experience; duration from issue; receipt of health care; medical history; or genetic information.

Part VII. LARGE GROUP HEALTH INSURANCE SOLE PROPRIETOR EXEMPTION

Sections 7. -7.2. Amend G.S. 58-65-60, 58-67-85, and 58-51-80(c) to exempt, for large group health insurance (more than 50 employees), a sole proprietor from the full-time basis or 30 hour workweek requirements in order to be eligible for the same coverage provided to the sole proprietor's employees.

Part VIII. NEWBORN COVERAGE REINSTATEMENT

Section 8. Amends 58-51-30(b) to correct an oversight in a 2001 enactment and again apply newborn coverage provisions to a more comprehensive list of insurance lines rather than just major medical insurance. Before the 2001 Session, newborn coverage requirements applied to generally all types of health insurance coverage that provided coverage to children. When changes were made in the 2001 session to expand coverage to provide for foster and adopted children, an erroneous reference was made to G.S. 58-3-167 and thus coverage requirements were inadvertently limited to apply only to major medical health coverages. This amendment would return coverage to its status before the 2001 error.

Part IX. LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES TECHNICAL CORRECTIONS

Section 9. Amends G.S. 58-51-15(a) (2)b. and 58-51-15(h) to technically correct a definitional problem regarding pre-existing conditions as applied to limited health, supplemental health, and

specified disease policies. HB 760 in the 2001 Session corrected an "unintended consequence" which threatened the availability of limited health, supplement health and specified disease policies. This availability problem was caused by earlier legislation imposing portability requirements on these policies and subjecting them to the same pre-existing conditions rules as other health insurance policies. In correcting the availability problem, HB 760 created a different problem in the form of a definitional gap for "pre-existing condition" respecting these policies. This amendment technically fixes this new problem.

Part X. REQUIRED GROUP HEALTH BENEFIT PLAN EXPERIENCE DISCLOSURES

Section 10. creates a new statute G.S. 58-3-172.1 to require a group health insurer for an employer to provide, upon the group policyholders' request, the group's experience information. Employer groups have complained to the Department that they are unable to shop their health coverage around to other insurers effectively because new insurers want to see the group's claims experience but current insurers are not required to provide that information. This amendment requires insurers to release the information upon request and will address a common complaint over which the Department currently has little or no authority.

Part XI. EQUITABLE ENROLLMENT PERIOD FOR SUPPLEMENTAL MEDICARE PLANS

Section 11. Amends G.S. 58-54-45(a) to allows persons retroactively enrolled in Part B Medicare 6 months to enroll in Medicare Supplement Plans A, C, and J after notice of the retroactive enrollment decision so they are not penalized or precluded from enrolling in those plans. This proposal would assist persons who are eligible for Medicare retroactively. These persons are always disabled under age 65 and by virtue of the retroactive enrollment miss the deadline for open enrollment for Medicare Supplement Plans. This amendment provides that in the case of retroactive enrollment, the Medicare beneficiary should be entitled to a six-month open enrollment for Medicare Supplement Plans, beginning with the month the beneficiary receives notice of the retroactive enrollment, so that the beneficiary is entitled to the same period for enrollment in supplement plans like everyone else who becomes eligible due to a disability.

Part XII. REVOCATION AND SUSPENSION TECHNICAL CORRECTION

Section 12. Amends G.S. 58-3-100(c) to technically correct the revocation and suspension law to include "beneficiary of a life or annuity contract" as a claimant to clarify said beneficiary's entitlement to the acknowledgement of a claim within 30 days of receipt.

Part XIII. HEALTH BENEFIT PLAN TRAVEL EXPENSES COVERAGE

Section 13. Creates a new G.S. 58-3-270 to mandate health benefit plan coverage for certain travel expenses associated with obtaining care when the person must travel more than 250 miles, one way, to obtain treatment. This amendment codifies a long standing Department policy that health benefit plans provide coverage for certain travel expenses for an insured, and a parent/guardian if the insured is a child, when the insurer requires the person to travel a significant distance from their home to obtain in-network care.

Part XIV. CREDIT INSURANCE AMENDMENT

Sections 14. Through 14.4. Amends G.S. 58-57-5, 58-57-50(b), 58-57-55, 58-57-60, and 58-57-110 in Article 57 (Credit Insurance) to codify Departmental policy or to clarify statutory requirements. The amendments:

(1) Define "critical period coverage" – This is a definition presently permitted by the Department.

(2) Allow credit card credit insurance to be provided through out-of-state insurance contracts (consistent with existing market conditions) - Credit card coverages are almost exclusively provided through out-of-state contracts because the large credit card companies are not located in North Carolina. This amendment will allow the continued availability of this type of insurance in North Carolina;

(3) Set an appropriate refund method for decreasing term credit life insurance;

(4) Require acknowledgement of credit insurance claims not paid within 60 days – Currently there are no provisions in the credit insurance provisions to require acknowledgement of a claim. This would bring credit insurance in uniformity with other lines regarding acknowledgement of a claim; and

(5) Allow a requirement of registration with the state unemployment office for involuntary unemployment benefits under a credit unemployment policy but prohibit the placing of a deadline for that registration or qualification for state unemployment benefits to qualify for the insurance benefits – Some Involuntary Unemployment Insurance (IUI) insurers have submitted forms that require an insured to register with the state unemployment office within 15 or 30 days of the loss of employment in order to qualify for credit involuntary unemployment benefits under the coverage. This deadline for registering would restrict payment of an otherwise valid claim. This amendment prohibits IUI insurers from imposing a deadline for registration with the state unemployment office, prohibits conditioning benefits upon qualification for state unemployment benefits but allows a requirement of registration (without deadline) with the state unemployment office in order to qualify for benefits.

PART XV. MEDICARE SUPPLEMENTAL INSURANCE POLICY CHANGES.

Sections 15 and 15.1. These sections would provide that for Medicare supplemental insurance policies, insurers must use issuance age, not attained age, to establish rates.

PART XVI. EFFECT OF HEADINGS, SEVERABILITY AND EFFECTIVE DATES

Sections 16 through 16.2. These sections contain a provision on the naming of headings for parts, contain a severability clause, and make Section 1 of the act effective October 1, 2005. Sections 2 through 8, 9, 9.1, 13, 14 through 14.4. 15 and 15.1 become effective January 1, 2004 and the remainder of the act becomes effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 339

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H339-ARG-7 [v.1]

Date _____ ,2003

Comm. Sub. [YES]
Amends Title [NO]
Third Edition-PCS

Senator _____

moves to amend the bill on page on page 30, line 19,
by deleting "An insurer shall use issue" and substituting "No insurer shall use attained";

further moves to amend the bill on page 31, line 33,
by deleting "14.4, 15, and 15.1" and substituting "and 14.4"; and

further moves to amend the bill on page 31, line 35,
by inserting after the word "date.", the following sentence:
"Sections 15 and 15.1 of this act become effective January 1, 2004, and apply to policies or certificates issued on or after that date but do not apply to policies or certificates renewed on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1023

Committee Substitute Favorable 4/24/03

Short Title: Underinsured Motorist Coverage. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF UNDERINSURED HIGHWAY VEHICLE TO PROVIDE GREATER PROTECTION TO CONSUMERS INJURED IN MOTOR VEHICLE ACCIDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-279.21(b)(4) reads as rewritten:

"(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this section and that afford uninsured motorist coverage as provided by subdivision (3) of this subsection, in an amount not to be less than the financial responsibility amounts for bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars ($1,000,000) as selected by the policy owner. An "uninsured motor vehicle," as described in subdivision (3) of this subsection, includes an "underinsured highway vehicle," which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. For purposes of an underinsured motorist claim asserted by a person injured in an accident where more than one person is injured, a highway vehicle will also be an "underinsured highway vehicle" if the total amount actually paid to that person under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and the insured under the owner's policy. For the purposes of this subdivision,

the term "highway vehicle" means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The provisions of subdivision (3) of this subsection shall apply to the coverage required by this subdivision. Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single liability claim presented for underinsured motorist coverage is deemed to occur when either (a) the limits of liability per claim have been paid upon the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant under the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; provided that this sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-15(9) and (10). The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added to the limits applicable to any other motor vehicle under that policy.

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the

amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that the insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall before doing so give notice to the insurer and give the insurer, at its expense, the opportunity to participate in the prosecution of the claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are joined, payment upon the judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any

insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist coverage from pursuing any right of subrogation.

The coverage required under this subdivision shall not be applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured does not reject underinsured motorist coverage and does not select different coverage limits, the amount of underinsured motorist coverage shall be equal to the highest limit of bodily injury liability coverage for any one vehicle in the policy. Once the option to reject underinsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless a named insured makes a written request to exercise a different option. The selection or rejection of underinsured motorist coverage by a named insured or the failure to select or reject is valid and binding on all insureds and vehicles under the policy.

Rejection of or selection of different coverage limits for underinsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by the named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance."

SECTION 2. This act becomes effective October 1, 2003, and applies to accidents occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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HOUSE BILL 1023

Committee Substitute Favorable 4/24/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H1023-CSRC-77 [v.4]

6/11/2003 7:01:33 PM

Short Title: Uninsured/Underinsured Motorist Coverage. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO ALLOW INTERPOLICY STACKING OF UNINSURED MOTORIST COVERAGE, TO AMEND THE DEFINITION OF UNDERINSURED HIGHWAY VEHICLE, AND TO CLARIFY THE AMOUNT OF UNDERINSURED LIABILITY COVERAGE AVAILABLE WHEN MULTIPLE PARTIES ARE INJURED IN MOTOR VEHICLE ACCIDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S 20-279.21(b)(3) reads as rewritten:

"(3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom, in an amount not to be less than the financial responsibility amounts for bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars ($1,000,000), as selected by the policy owner. The provisions shall include coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured, with a limit in the aggregate for all insureds in any one accident of up to the limits of property damage liability in the owner's policy of liability insurance,

and subject, for each insured, to an exclusion of the first one hundred dollars ($100.00) of such damages. The provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that the other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima facie presumption that the operator of the other motor vehicle was uninsured at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy. The coverage required under this subdivision is not applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured in the policy does not reject uninsured motorist coverage and does not select different coverage limits, the amount of uninsured motorist coverage shall be equal to the highest limit of bodily injury and property damage liability coverage for any one vehicle in the policy. Once the option to reject the uninsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless the named insured makes a written request to exercise a different option. The selection or rejection of uninsured motorist coverage or the failure to select or reject by a named insured is valid and binding on all insureds and vehicles under the policy. Rejection of or selection of different coverage limits for uninsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by a named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance.

~~Where coverage is provided on more than one vehicle insured on the same policy or where the owner or the named insured has more than one policy with coverage under this subdivision, there shall not be permitted any combination of coverage within a policy or where more than one policy may apply to determine the total amount of coverage available.~~

If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of a policy that insures more than one motor vehicle, that person shall not be permitted to combine the uninsured motorist limit applicable to any one motor vehicle with the uninsured motorist limit applicable to any other motor vehicle to determine the total amount of uninsured motorist coverage available to that person. If a person who is legally entitled to recover damages

from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of more than one policy, that person may combine the highest applicable uninsured motorist limit available under each policy to determine the total amount of uninsured motorist coverage available to that person. The previous sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-10(1) and (2).

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle, which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether the pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law. The failure to post notice to the insurer 60 days in advance of the initiation of suit shall not be grounds for dismissal of the action, but shall automatically extend the time for the filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

b. Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in that event, the insured, or someone in his behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in the notice the time, date and place of the injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer any further reasonable information concerning the accident and the injury that the insurer requests. If the forms are not furnished within 15 days, the insured is deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less than 60 days from the posting of the first notice of the injury or accident to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent. The failure to post notice to the insurer 60 days before the initiation of the suit shall not be grounds for dismissal of the action, but shall automatically extend the time for filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

Provided under this section the term "uninsured motor vehicle" shall include, but not be limited to, an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of coverage, the insurer making payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of that person against any person or

organization legally responsible for the bodily injury for which the payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is that insurance but the insurance company writing the insurance denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of the bodily injury and property damage liability insurance, or the owner of the motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

a. A motor vehicle owned by the named insured;

b. A motor vehicle that is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

c. A motor vehicle that is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);

d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or

e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

For purposes of this section "persons insured" means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above or any other person or persons in lawful possession of the motor vehicle."

SECTION 2. G.S. 20-279.21(b)(4) reads as rewritten:

"(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this section and that afford uninsured motorist coverage as provided by subdivision (3) of this subsection, in an amount not to be less than the financial responsibility amounts for bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars ($1,000,000) as selected by the policy owner. An

"uninsured motor vehicle," as described in subdivision (3) of this subsection, includes an "underinsured highway vehicle," which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. For purposes of an underinsured motorist claim asserted by a person injured in an accident where more than one person is injured, a highway vehicle will also be an "underinsured highway vehicle" if the total amount actually paid to that person under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and the insured under the owner's policy. The previous sentence shall not apply to a motor vehicle that is insured under an owner's policy where (i) the liability coverage limits of liability for that motor vehicle have been exhausted; and (ii) the limits of liability for underinsured motorist coverage is the same or less than the limits of liability for liability coverage. For the purposes of this subdivision, the term "highway vehicle" means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The provisions of subdivision (3) of this subsection shall apply to the coverage required by this subdivision. Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single liability claim presented for underinsured motorist coverage is deemed to occur when either (a) the limits of liability per claim have been paid upon the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant under the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or

additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; provided that this sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-15(9) and (10). The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added to the limits applicable to any other motor vehicle under that policy.

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that the insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall before doing so give notice to the insurer and give the insurer, at its expense, the opportunity to participate in the prosecution of the claim. Upon the entry of judgment in a suit upon any such claim in which the

underinsured motorist insurer and claimant are joined, payment upon the judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist

benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist coverage from pursuing any right of subrogation.

The coverage required under this subdivision shall not be applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured does not reject underinsured motorist coverage and does not select different coverage limits, the amount of underinsured motorist coverage shall be equal to the highest limit of bodily injury liability coverage for any one vehicle in the policy. Once the option to reject underinsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless a named insured makes a written request to exercise a different option. The selection or rejection of underinsured motorist coverage by a named insured or the failure to select or reject is valid and binding on all insureds and vehicles under the policy.

Rejection of or selection of different coverage limits for underinsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by the named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance."

SECTION 3. This act becomes effective January 1, 2004 and applies to accidents occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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HOUSE BILL 1023

Committee Substitute Favorable 4/24/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H1023-PCS45161-RC-77

Short Title: Uninsured/Underinsured Motorist Coverage. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO ALLOW INTERPOLICY STACKING OF UNINSURED MOTORIST COVERAGE, TO AMEND THE DEFINITION OF UNDERINSURED HIGHWAY VEHICLE, AND TO CLARIFY THE AMOUNT OF UNDERINSURED LIABILITY COVERAGE AVAILABLE WHEN MULTIPLE PARTIES ARE INJURED IN MOTOR VEHICLE ACCIDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-279.21(b)(3) reads as rewritten:

"(3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom, in an amount not to be less than the financial responsibility amounts for bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars ($1,000,000), as selected by the policy owner. The provisions shall include coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured, with a limit in the aggregate for all insureds in any one accident of up to the limits of property damage liability in the owner's policy of liability insurance,

and subject, for each insured, to an exclusion of the first one hundred dollars ($100.00) of such damages. The provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that the other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima facie presumption that the operator of the other motor vehicle was uninsured at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy. The coverage required under this subdivision is not applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured in the policy does not reject uninsured motorist coverage and does not select different coverage limits, the amount of uninsured motorist coverage shall be equal to the highest limit of bodily injury and property damage liability coverage for any one vehicle in the policy. Once the option to reject the uninsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless the named insured makes a written request to exercise a different option. The selection or rejection of uninsured motorist coverage or the failure to select or reject by a named insured is valid and binding on all insureds and vehicles under the policy. Rejection of or selection of different coverage limits for uninsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by a named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance.

~~Where coverage is provided on more than one vehicle insured on the same policy or where the owner or the named insured has more than one policy with coverage under this subdivision, there shall not be permitted any combination of coverage within a policy or where more than one policy may apply to determine the total amount of coverage available.~~

If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of a policy that insures more than one motor vehicle, that person shall not be permitted to combine the uninsured motorist limit applicable to any one motor vehicle with the uninsured motorist limit applicable to any other motor vehicle to determine the total amount of uninsured motorist coverage available to that person. If a person who is legally entitled to recover damages from

the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of more than one policy, that person may combine the highest applicable uninsured motorist limit available under each policy to determine the total amount of uninsured motorist coverage available to that person. The previous sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-10(1) and (2).

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle, which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether the pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law. The failure to post notice to the insurer 60 days in advance of the initiation of suit shall not be grounds for dismissal of the action, but shall automatically extend the time for the filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

b. Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in that event, the insured, or someone in his behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in the notice the time, date and place of the injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer any further reasonable information concerning the accident and the injury that the insurer requests. If the forms are not furnished within 15 days, the insured is deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less than 60 days from the posting of the first notice of the injury or accident to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent. The failure to post notice to the insurer 60 days before the initiation of the suit shall not be grounds for dismissal of the action, but shall automatically extend the time for filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

Provided under this section the term "uninsured motor vehicle" shall include, but not be limited to, an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of coverage, the insurer making payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of that person against any person or

organization legally responsible for the bodily injury for which the payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is that insurance but the insurance company writing the insurance denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of the bodily injury and property damage liability insurance, or the owner of the motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

a. A motor vehicle owned by the named insured;

b. A motor vehicle that is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

c. A motor vehicle that is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);

d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or

e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

For purposes of this section "persons insured" means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above or any other person or persons in lawful possession of the motor vehicle."

SECTION 2. G.S. 20-279.21(b)(4) reads as rewritten:

"(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this section and that afford uninsured motorist coverage as provided by subdivision (3) of this subsection, in an amount not to be less than the financial responsibility amounts for

bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars ($1,000,000) as selected by the policy owner. An "uninsured motor vehicle," as described in subdivision (3) of this subsection, includes an "underinsured highway vehicle," which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. For purposes of an underinsured motorist claim asserted by a person injured in an accident where more than one person is injured, a highway vehicle will also be an "underinsured highway vehicle" if the total amount actually paid to that person under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and the insured under the owner's policy. The previous sentence shall not apply to a motor vehicle that is insured under an owner's policy where (i) the liability coverage limits of liability for that motor vehicle have been exhausted and (ii) the limits of liability for underinsured motorist coverage is the same or less than the limits of liability for liability coverage. For the purposes of this subdivision, the term "highway vehicle" means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The provisions of subdivision (3) of this subsection shall apply to the coverage required by this subdivision. Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single liability claim presented for underinsured motorist coverage is deemed to occur when either (a) the limits of liability per claim have been paid upon the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant under the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to

the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; provided that this sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-15(9) and (10). The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added to the limits applicable to any other motor vehicle under that policy.

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that the insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall before doing so give notice to the insurer and give the insurer, at its

expense, the opportunity to participate in the prosecution of the claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are joined, payment upon the judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the

policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist coverage from pursuing any right of subrogation.

The coverage required under this subdivision shall not be applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured does not reject underinsured motorist coverage and does not select different coverage limits, the amount of underinsured motorist coverage shall be equal to the highest limit of bodily injury liability coverage for any one vehicle in the policy. Once the option to reject underinsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless a named insured makes a written request to exercise a different option. The selection or rejection of underinsured motorist coverage by a named insured or the failure to select or reject is valid and binding on all insureds and vehicles under the policy.

Rejection of or selection of different coverage limits for underinsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by the named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance."

SECTION 3. This act becomes effective January 1, 2004, and applies to accidents occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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HOUSE BILL 1023

Committee Substitute Favorable 4/24/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H1023-PCS45161-RC-77

Short Title: Uninsured/Underinsured Motorist Coverage. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO ALLOW INTERPOLICY STACKING OF UNINSURED MOTORIST COVERAGE, TO AMEND THE DEFINITION OF UNDERINSURED HIGHWAY VEHICLE, AND TO CLARIFY THE AMOUNT OF UNDERINSURED LIABILITY COVERAGE AVAILABLE WHEN MULTIPLE PARTIES ARE INJURED IN MOTOR VEHICLE ACCIDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-279.21(b)(3) reads as rewritten:

"(3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom, in an amount not to be less than the financial responsibility amounts for bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars ($1,000,000), as selected by the policy owner. The provisions shall include coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured, with a limit in the aggregate for all insureds in any one accident of up to the limits of property damage liability in the owner's policy of liability insurance,

and subject, for each insured, to an exclusion of the first one hundred dollars ($100.00) of such damages. The provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that the other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima facie presumption that the operator of the other motor vehicle was uninsured at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy. The coverage required under this subdivision is not applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured in the policy does not reject uninsured motorist coverage and does not select different coverage limits, the amount of uninsured motorist coverage shall be equal to the highest limit of bodily injury and property damage liability coverage for any one vehicle in the policy. Once the option to reject the uninsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless the named insured makes a written request to exercise a different option. The selection or rejection of uninsured motorist coverage or the failure to select or reject by a named insured is valid and binding on all insureds and vehicles under the policy. Rejection of or selection of different coverage limits for uninsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by a named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance.

~~Where coverage is provided on more than one vehicle insured on the same policy or where the owner or the named insured has more than one policy with coverage under this subdivision, there shall not be permitted any combination of coverage within a policy or where more than one policy may apply to determine the total amount of coverage available.~~

If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of a policy that insures more than one motor vehicle, that person shall not be permitted to combine the uninsured motorist limit applicable to any one motor vehicle with the uninsured motorist limit applicable to any other motor vehicle to determine the total amount of uninsured motorist coverage available to that person. If a person who is legally entitled to recover damages from

the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of more than one policy, that person may combine the highest applicable uninsured motorist limit available under each policy to determine the total amount of uninsured motorist coverage available to that person. The previous sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-10(1) and (2).

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle, which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether the pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law. The failure to post notice to the insurer 60 days in advance of the initiation of suit shall not be grounds for dismissal of the action, but shall automatically extend the time for the filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

b. Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in that event, the insured, or someone in his behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in the notice the time, date and place of the injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer any further reasonable information concerning the accident and the injury that the insurer requests. If the forms are not furnished within 15 days, the insured is deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less than 60 days from the posting of the first notice of the injury or accident to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent. The failure to post notice to the insurer 60 days before the initiation of the suit shall not be grounds for dismissal of the action, but shall automatically extend the time for filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

Provided under this section the term "uninsured motor vehicle" shall include, but not be limited to, an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of coverage, the insurer making payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of that person against any person or

organization legally responsible for the bodily injury for which the payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is that insurance but the insurance company writing the insurance denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of the bodily injury and property damage liability insurance, or the owner of the motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

a. A motor vehicle owned by the named insured;

b. A motor vehicle that is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

c. A motor vehicle that is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);

d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or

e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

For purposes of this section "persons insured" means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above or any other person or persons in lawful possession of the motor vehicle."

SECTION 2. G.S. 20-279.21(b)(4) reads as rewritten:

"(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this section and that afford uninsured motorist coverage as provided by subdivision (3) of this subsection, in an amount not to be less than the financial responsibility amounts for

expense, the opportunity to participate in the prosecution of the claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are joined, payment upon the judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the

policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist coverage from pursuing any right of subrogation.

The coverage required under this subdivision shall not be applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured does not reject underinsured motorist coverage and does not select different coverage limits, the amount of underinsured motorist coverage shall be equal to the highest limit of bodily injury liability coverage for any one vehicle in the policy. Once the option to reject underinsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless a named insured makes a written request to exercise a different option. The selection or rejection of underinsured motorist coverage by a named insured or the failure to select or reject is valid and binding on all insureds and vehicles under the policy.

Rejection of or selection of different coverage limits for underinsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by the named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance."

SECTION 3. This act becomes effective January 1, 2004, and applies to accidents occurring on or after that date.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 12, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BILL RUSTIN	AFP
Roger Bone	Bone & Assoc -
Barbara Carsten	NFSS
PAUL MAHONEY	NCAHP
Barbara Morales Bush	NCDOT
Courtney D Cannady	NC DOT
Frank Folwell	NC DOT
REGINALD JOHNSON	CRL
Dion Robson	CRL
Peter Stilkerson	CRAFC
Yolanda McGirt	CRL

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 12, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
K. Michael Herman	Health Insurance Assoc. of America Washington D.C.
Angela Horne	NCMS
Crissy Porter	Smith Anderson.
Tanya Wolfram	CRANC
Al Ripley	NC Justice Ctr
Helen Savage	AARP
David Stoller	State Farm
William E. Melville	NC Farm Bureau Mutual Ins. Co.
Malcolm White	CRL
Susan Lupton	CRL
[illegible]	Poyner + Spruill

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 12, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Phelps	NCLM
Joe McClees	McClees Consulting
[signature]	MGM
BILL HALE	JORDAN PRICE
John M. Mullen	MFAS
Susan Valaam	Nationwide
Paul Stock	NCBA
BILL SCOGGIN	KCLH
Betty Turner	Bank of America
[signature]	MVA
Joanne Stevens	Nursing + NCCASA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 12, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Fran Cockman	NC statewatch
John McHugh	Gov ops. '03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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HOUSE BILL 1023

Committee Substitute Favorable 4/24/03

Short Title: Underinsured Motorist Coverage. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF UNDERINSURED HIGHWAY VEHICLE TO PROVIDE GREATER PROTECTION TO CONSUMERS INJURED IN MOTOR VEHICLE ACCIDENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-279.21(b)(4) reads as rewritten:

"(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this section and that afford uninsured motorist coverage as provided by subdivision (3) of this subsection, in an amount not to be less than the financial responsibility amounts for bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars ($1,000,000) as selected by the policy owner. An "uninsured motor vehicle," as described in subdivision (3) of this subsection, includes an "underinsured highway vehicle," which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. For purposes of an underinsured motorist claim asserted by a person injured in an accident where more than one person is injured, a highway vehicle will also be an "underinsured highway vehicle" if the total amount actually paid to that person under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and the insured under the owner's policy. For the purposes of this subdivision,

the term "highway vehicle" means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The provisions of subdivision (3) of this subsection shall apply to the coverage required by this subdivision. Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single liability claim presented for underinsured motorist coverage is deemed to occur when either (a) the limits of liability per claim have been paid upon the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant under the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; provided that this sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-15(9) and (10). The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added to the limits applicable to any other motor vehicle under that policy.

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the

amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that the insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall before doing so give notice to the insurer and give the insurer, at its expense, the opportunity to participate in the prosecution of the claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are joined, payment upon the judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any

insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist coverage from pursuing any right of subrogation.

The coverage required under this subdivision shall not be applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured does not reject underinsured motorist coverage and does not select different coverage limits, the amount of underinsured motorist coverage shall be equal to the highest limit of bodily injury liability coverage for any one vehicle in the policy. Once the option to reject underinsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless a named insured makes a written request to exercise a different option. The selection or rejection of underinsured motorist coverage by a named insured or the failure to select or reject is valid and binding on all insureds and vehicles under the policy.

Rejection of or selection of different coverage limits for underinsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by the named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance."

SECTION 2. This act becomes effective October 1, 2003, and applies to accidents occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 339

Committee Substitute Favorable 4/24/03

Committee Substitute #2 Favorable 4/30/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H339-PCS30362-RG-22

Short Title: Life and Health Insurance Omnibus.-AB (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO CONFORM NORTH CAROLINA'S THIRD PARTY ADMINISTRATOR ARTICLE TO REVISIONS TO THE NAIC MODEL THIRD PARTY ADMINISTRATOR STATUTE; REQUIRE GROUP ANNUITY INSURERS TO ISSUE INDIVIDUAL CERTIFICATES OF COVERAGE TO EACH ANNUITANT; REORGANIZE ARTICLE 60 OF CHAPTER 58 OF THE GENERAL STATUTES AND AMEND CURRENT DISCLOSURE REQUIREMENTS FOR SOLICITATION OF LIFE INSURANCE PRODUCTS AND ANNUITIES; REQUIRE INSURERS TO NOTIFY EMPLOYEES OF THE EXISTENCE OF EMPLOYER-OWNED LIFE INSURANCE POLICIES WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF COVERAGE; REQUIRE THAT ASSOCIATION PREMIUM RATES FOR ACCIDENT AND HEALTH INSURANCE BE ACTUARIALLY SOUND AND THAT ASSOCIATIONS BE RATED AS A SINGLE GROUP WHEN THE COVERAGE PROVIDED IS NOT EMPLOYER-BASED; LIMIT AN INDIVIDUAL ACCIDENT AND HEALTH INSURER'S USE OF AN INDIVIDUAL'S OWN CLAIMS' EXPERIENCE TO DEVELOP THE INDIVIDUAL'S RENEWAL RATE; EXEMPT A SOLE PROPRIETOR FROM THE FULL-TIME BASIS OR THIRTY-HOUR WORKWEEK REQUIREMENTS TO BE ELIGIBLE FOR LARGE GROUP HEALTH COVERAGE LIKE THE PROPRIETOR'S FULL-TIME EMPLOYEES; CORRECT AN INADVERTENT CROSS-REFERENCE IN ORDER TO REAPPLY NEWBORN COVERAGE TO A MORE COMPREHENSIVE GROUP OF INSURERS; TECHNICALLY CORRECT AN OMISSION REGARDING PROVISIONS GOVERNING PREEXISTING CONDITIONS FOR LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES; DECREASE THE TOTAL NUMBER OF MEMBERS THAT SERVE ON THE

SMALL EMPLOYER REINSURANCE POOL BOARD FROM NINE TO SIX; ALLOW PERSONS RETROACTIVELY ENROLLED IN MEDICARE PART B THE SAME SIX-MONTH OPEN ENROLLMENT PERIOD FOR MEDICARE SUPPLEMENT PLANS AS PERSONS WHO ENROLLED IN MEDICARE PART B WITHOUT A RETROACTIVE EFFECTIVE DATE OF COVERAGE; TECHNICALLY CORRECT THE REVOCATION AND SUSPENSION LAW TO INCLUDE A BENEFICIARY OF A LIFE OR ANNUITY CONTRACT AS A CLAIMANT; MANDATE HEALTH BENEFIT COVERAGE FOR DESIGNATED TRAVEL EXPENSES WHEN THE REQUIRED DISTANCE TRAVELED THRESHOLD IS MET; TO REQUIRE RATE METHODOLOGY UNDER MEDICARE SUPPLEMENTAL INSURANCE POLICIES TO BE BASED ON ISSUE AGE AND TO MAKE OTHER CHANGES TO THE LAW PERTAINING TO MEDICARE SUPPLEMENTAL INSURANCE POLICIES; AND MAKE TECHNICAL CORRECTIONS TO THE CREDIT INSURANCE LAWS.

The General Assembly of North Carolina enacts:

PART I. THIRD PARTY ADMINISTRATOR ACT REWRITE

SECTION 1. G.S. 58-56-2 is repealed.

SECTION 1.1. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-3. Definitions.**

As used in this Article:

(1) "Administrator", "third party administrator", and "TPA" mean a person who directly or indirectly underwrites, collects, or charges premiums from, or adjusts or settles claims on, residents of this State in connection with life, annuity, or health coverage offered or provided by an insurer, except any of the following:

a. An employer, or a wholly owned direct or indirect subsidiary of an employer, on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer.

b. A union on behalf of its members.

c. An insurer that is authorized to transact insurance in this State pursuant to Articles 1 through 67 of this Chapter.

d. An insurance producer licensed to sell life, annuity, or health coverage in this State, whose activities are limited exclusively to the sale of insurance.

e. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.

f. A trust and its trustees, agents, and employees acting pursuant to a trust established in conformity with 29 U.S.C. § 186.

g. A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees and employees acting pursuant to the trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account which

meets the requirements of section 401(f) of the Internal Revenue Code.

h. A credit union or a financial institution that is subject to supervision or examination by federal or State banking authorities, or a mortgage lender, to the extent it collects and remits premiums to licensed insurance producers or to limited lines producers or authorized insurers in connection with loan payments.

i. A credit card issuing company that advances for and collects insurance premiums or charges from its credit card holders who have authorized collection.

j. A person who adjusts or settles claims in the normal course of that person's practice or employment as a licensed attorney and who does not collect charges or premiums in connection with life, annuity, or health coverage.

k. An adjuster licensed by this State whose activities are limited to adjustment of claims.

l. A person licensed as a managing general agent in this State, whose activities are limited exclusively to the scope of activities conveyed under the license.

m. An administrator who is affiliated with an insurer and who only performs the contractual duties (between the administrator and the insurer) of an administrator for the direct and assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator's books and records to the Commissioner, upon a request from the Commissioner.

(2) "Affiliate or affiliated" means an entity or person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Commissioner" means the Commissioner of Insurance of this State.

(4) "Control" means the term as defined in G.S. 58-19-5(2).

(5) "GAAP" means United States generally accepted accounting principles consistently applied.

(6) "Home state" means the District of Columbia and any state or territory of the United States in which an administrator is incorporated or maintains its principal place of business. If neither the state in which the administrator is incorporated nor the state in which it maintains its principal place of business has adopted the NAIC Third Party Administrator Statute, or a substantially similar law governing administrators, the administrator may declare another state in which it conducts business to be its "home state".

(7) "Insurance producer" means a person who sells, solicits, or negotiates a contract of insurance as those terms are defined in this Article.

(8) "Insurer" means an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, and a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(9) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(10) "Nonresident administrator" means a person who is applying for licensure or is licensed in any state other than the administrator's home state.

(11) "Person" means an individual or a business entity.

(12) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(13) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(14) "Underwrites" or "underwriting" includes the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer or self-funded plan and also includes the overall planning and coordinating of a benefits program.

(15) "Uniform Application" means the current version of the NAIC Uniform Application for Third Party Administrators."

SECTION 1.2. G.S. 58-56-6 reads as rewritten:

"**§ 58-56-6. Written agreement necessary.**

(a) No TPA may act as a TPA without a written agreement between the TPA and the insurer. The written agreement shall be retained as part of the official records of both the insurer and the TPA for the duration of the agreement and for five years thereafter. The agreement shall contain all provisions required by this Article, ~~to the extent those requirements apply to the functions performed by the TPA.~~ except insofar as those requirements do not apply to the functions performed by the TPA.

(b) The agreement shall include a statement of duties that the TPA is expected to perform on behalf of the insurer and the ~~kinds of insurance the TPA is to be authorized to administer.~~lines, classes, or types of insurance for which the TPA is to be authorized to administer. The agreement shall provide for underwriting or other standards pertaining to the business underwritten by the insurer.

(c) The insurer or TPA may, with written notice, terminate the written agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the TPA during the pendency of any dispute regarding the cause for termination of the agreement. The insurer ~~must~~ shall fulfill any lawful obligations with

respect to policies affected by the agreement, regardless of any dispute between the insurer and the TPA."

SECTION 1.3. G.S. 58-56-16 reads as rewritten:

"**§ 58-56-16. Records to be kept.**

(a) Every TPA shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance record keeping and must be maintained for a period of at least five years after the date of their creation.

~~(b) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. The Commissioner shall keep confidential any trade secrets contained in those books and records, including the identity and addresses of policyholders and certificate holders, except that the Commissioner may use the information in any judicial or administrative proceeding instituted against the TPA.~~

(c) The insurer shall own the records generated by the TPA pertaining to the insurer, but the TPA shall retain the right to continuing access to books and records to permit the TPA to fulfill all of its contractual obligations to insured parties, claimants, and the insurer.

(d) In the event the insurer and the TPA cancel their agreement, notwithstanding the provisions of subsection (a) of this section, the TPA may, by written agreement with the insurer, transfer all records to a new TPA rather than retain them for five years. In this case, the new TPA shall acknowledge, in writing, that it is responsible for retaining the records of the prior TPA as required in subsection (a) of this section.

(e) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. Any documents, materials, or other information in the possession or control of the Commissioner that are furnished by a TPA, insurer, insurance producer, or an employee or agent thereof acting on behalf of the TPA, insurer, or insurance producer, or obtained by the Commissioner in an investigation shall be confidential by law and privileged, shall not constitute a public record as defined by G.S. 132-1, shall not be subject to subpoena, shall not be subject to discovery, and shall not be admissible in evidence in any private civil action. However, the Commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.

(f) Neither the Commissioner nor any person who receives documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (e) of this section.

(g) In order to assist in the performance of the Commissioner's duties, the Commissioner:

(1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (e) of this section, with other State, federal, and

international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, and with State, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(2) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(3) May enter into agreements governing sharing and use of information consistent with this subsection.

(h) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (g) of this section.

(i) Nothing in this Article shall prohibit the Commissioner from releasing final, adjudicated actions including for-cause terminations that are open to public inspection pursuant to Chapter 132 of the General Statutes or to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or its subsidiaries."

SECTION 1.4. G.S. 58-56-51 is repealed.

SECTION 1.5. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-52. Home state certificate of authority or license.**

(a) A person shall apply to be a TPA in its home state upon the Uniform Application and shall receive a certificate of authority or license from the Commissioner of its home state prior to performing any function of a TPA in this State. Each application shall be accompanied by a nonrefundable filing fee of one hundred dollars ($100.00).

(b) The Uniform Application shall include or be accompanied by the following information and documents:

(1) All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, and other applicable documents and all amendments to those documents.

(2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the applicant.

(3) NAIC Biographical Affidavit for the individuals who are responsible for the conduct of affairs of the applicant, including all members of the

board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company; any shareholders or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the applicant; and any other person who exercises control or influence over the affairs of the applicant.

(4) Audited annual financial statements or reports for the two most recent fiscal years that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two fiscal years, the Uniform Application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years and for any month during the current fiscal year for which the financial statements or reports have been completed. The applicant shall also include any other information the Commissioner requires in order to review the current financial condition of the applicant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include all of the following:

a. Amounts shown on the consolidated audited financial report shall be shown on the worksheet.

b. Amounts for each entity shall be stated separately.

c. Explanations of consolidating and eliminating entries.

(5) A statement describing the business plan including information on staffing levels and activities proposed in this State and nationwide. The plan shall provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping, and underwriting.

(6) Any other pertinent information required by the Commissioner.

(c) A TPA licensed or applying for licensure under this section shall make available for inspection by the Commissioner copies of all contracts with insurers or other persons utilizing the services of the TPA.

(d) A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

(e) The Commissioner may refuse to issue a certificate of authority or license if the Commissioner determines that the TPA, or any individual responsible for the conduct of affairs of the TPA, is not competent, trustworthy, financially responsible, or of good personal and business reputation, has had an insurance or an administrator certificate of authority or license denied or revoked for cause by any jurisdiction, or if

the Commissioner determines that any of the grounds set forth in G.S. 58-56-72 exists with respect to the TPA.

(f) A certificate of authority or license issued under this section shall remain valid, unless surrendered, suspended, or revoked by the Commissioner, for so long as the TPA continues in business in this State and remains in compliance with this Article.

(g) A TPA licensed or applying for licensure under this section shall immediately notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a certificate of authority or license in this State. The Commissioner shall report any such changes to the producer database maintained by the NAIC or affiliates or subsidiaries of the NAIC."

SECTION 1.6. G.S. 58-56-56 is repealed.

SECTION 1.7. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-57. Registration requirement.**

A person who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this State in connection with life, annuity, or health coverage provided by a self-funded plan shall register with the Commissioner annually, verifying its status as herein described in a format prescribed by the Commissioner."

SECTION 1.8. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-62. Annual report and filing.**

(a) Each TPA licensed under G.S. 58-56-52 shall file an annual report for the preceding calendar year with the Commissioner on or before July 1 of each year or within such extension of time as the Commissioner for good cause may grant. The annual report shall include an audited financial statement performed by an independent certified public accountant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the information required under G.S. 58-56-52(b)(4)a. through c. The report shall be in the form and contain such matters as the Commissioner prescribes and shall be verified by at least two officers of the TPA.

(b) The annual report shall include the complete names and addresses of all insurers with which the administrator had agreements during the preceding fiscal year.

(c) At the time of filing its annual report, the administrator shall pay a nonrefundable filing fee of one hundred dollars ($100.00).

(d) The Commissioner shall review the most recently filed annual report of each administrator on or before September 1 of each year. Upon completion of its review, the Commissioner shall either:

(1) Issue a certification to the administrator that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is currently licensed and in good standing, or noting any deficiencies found in the annual report and financial statements; or

(2) Update any electronic database maintained by the National Association of Insurance Commissioners, or its affiliates or subsidiaries, indicating that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is in compliance with existing law, or noting any deficiencies found in the annual report."

SECTION 1.9. G.S. 58-56-66 is repealed.

SECTION 1.10. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-67. Nonresident administrator certificate of authority.**

(a) Unless a TPA has obtained a home state certificate of authority or license in this State under G.S. 58-56-52, any TPA who performs administrator duties in this State shall obtain a nonresident administrator certificate of authority or license in accordance with this section by filing with the Commissioner the Uniform Application accompanied by a letter of certification from the home state of the TPA. In lieu of requiring a TPA to file a letter of certification with the Uniform Application, the Commissioner may verify the nonresident administrator's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries.

(b) A TPA shall not be eligible for a nonresident administrator certificate of authority or license under this section if it does not hold a certificate of authority as a resident in a home state that has adopted the NAIC Third Party Administrator Statute or a substantially similar law governing TPAs.

(c) Except as provided in subsections (b) and (h) of this section, the Commissioner shall issue to the TPA a nonresident administrator certificate of authority or license promptly upon receipt of a complete application.

(d) Unless notified by the Commissioner that the Commissioner is able to verify the nonresident TPA's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners, or its affiliates or subsidiaries, each nonresident TPA annually shall file a statement that its home state administrator certificate of authority or license remains in force and has not been revoked or suspended by its home state during the preceding year. The statement required by this subsection shall be filed by November 1 each year.

(e) At the time of filing the statement required under subsection (d) of this section or if the Commissioner has notified the nonresident administrator that the Commissioner is able to verify the nonresident administrator's home state certificate of authority or license status through an electronic database, the nonresident TPA shall pay, no later than November 1, a nonrefundable filing fee of one hundred dollars ($100.00).

(f) A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

(g) A nonresident TPA is not required to hold a nonresident administrator certificate of authority or license in this State if the TPA's duties in this State are limited to the administration of a group policy or plan of insurance and no more than a total of 100 persons insured for all plans reside in this State.

(h) The Commissioner may refuse to issue a nonresident administrator certificate of authority or license, or delay the issuance of a nonresident administrator certificate of authority or license, if the Commissioner determines that, due to events or information obtained subsequent to the home state's licensure of the TPA, the nonresident TPA cannot satisfy the requirements of this Article or that grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license. If the Commissioner refuses to issue a certificate of authority of license pursuant to this section, the Commissioner shall give written notice of its determination to the Commissioner of the home state, and the Commissioner may delay the issuance of a nonresident administrator certificate of authority to the nonresident TPA until the Commissioner determines that the administrator can satisfy the requirements of this Article and that no grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license."

SECTION 1.11. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-72. Grounds for denial, suspension, or revocation of certificate of authority.**

(a) The certificate of authority or license of a TPA shall be denied, suspended, or revoked if the Commissioner finds that the TPA:

(1) Is in an unsound financial condition;

(2) Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this State hazardous or injurious to insured persons or the public; or

(3) Has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final.

(b) The Commissioner may, after notice and opportunity for hearing, deny, suspend, or revoke the certificate of authority or license of a TPA if the Commissioner finds that the TPA:

(1) Has violated any lawful rule or order of the Commissioner or any provision of the insurance laws of this State;

(2) Has refused to be examined or to produce its accounts, records, and files for examination, or if any individual responsible for the conduct of affairs of the TPA has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination when required by the Commissioner, including:

a. Members of the board of directors, board of trustees, executive committee, or other governing board or committee;

b. The principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company;

c. Any shareholder or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the TPA; and

d. Any other person who exercises control or influence over the affairs of the TPA;

(3) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the TPA to secure full payment or settlement of such claims;

(4) Fails, at any time, to meet any qualification for which issuance of the certificate could have been refused had the failure then existed and been known to the Commissioner;

(5) Or any of the individuals responsible for the conduct of its affairs has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether adjudication was withheld, including:

a. Members of the board of directors, board of trustees, executive committee or other governing board or committee;

b. The principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company;

c. Any shareholder or member holding directly or indirectly ten percent or more of its voting stock, voting securities, or voting interest; and

d. Any other person who exercises control or influence over its affairs;

(6) Is under suspension or revocation in another state; or

(7) Has failed to timely file its annual report pursuant to G.S. 58-56-62 if a resident administrator or its statement and filing fee, as applicable, pursuant to G.S. 58-56-67(d) and (e) if a nonresident administrator.

(c) The Commissioner may, without advance notice or hearing, immediately suspend the certificate of authority or license of a TPA if the Commissioner finds that one or more of the following circumstances exist:

(1) The TPA is insolvent or impaired.

(2) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the TPA has been commenced in any state.

(3) The financial condition or business practices of the TPA otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this State.

(d) If the Commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of authority issued under this part, the Commissioner may, in lieu of suspension or revocation, impose a fine upon the TPA."

SECTION 1.12. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-73. Prohibited practices.**

No person shall act as, offer to act as, or hold himself or herself out as a TPA in this State without a valid domestic or nonresident administrator certificate of authority issued by the Commissioner."

PART II. GROUP ANNUITY CONTRACTS

SECTION 2. G.S. 58-58-145 reads as rewritten:

"**§ 58-58-145. Group annuity contracts defined; ~~requirements.~~requirements; issuance of individual certificates.**

(a) Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable to more than one person, is a group annuity contract. The person, firm or corporation to whom or to which such contract is issued, as herein provided, is the holder of the contract. The term "annuitant" means any person to whom or which payments are made under the group annuity contract. No authorized insurer shall deliver or issue for delivery in this State any group annuity contract except upon a group of annuitants that conforms to the following: under a contract issued to an employer, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, the stipulated payments on which shall be paid by the holder of such contract either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the employees covered by such contract, and providing a plan of retirement annuities under a plan which permits all of the employees of such employer or of any specified class or classes thereof to become annuitants. Any such group of employees may include retired employees, and may include officers and managers as employees, and may include the employees of subsidiary or affiliated corporations of a corporation employer, and may include the individual proprietors, partners and employees of affiliated individuals and firms controlled by the holders through stock ownership, contract or otherwise.

(b) The insurer of a group annuity contract shall issue to the policyholder, within 30 days of the effective date of the group annuity contract, an individual certificate for delivery to each annuitant which:

(1) Identifies the annuity to which the annuitant is entitled.

(2) States the name of the person to whom the annuity is payable.

(3) Discloses all of the rights and obligations of the insurer, the policyholder, the annuitant, and the persons to whom the annuity is payable with respect to the group annuity contract.

G.S. 58-3-150 applies to the form of the individual certificate required by this subsection.

(c) Each group annuity contract shall include a provision that the insurer will issue to the policyholder within 30 days of the effective date of the contract, for delivery to each annuitant, an individual certificate setting forth the information described in subsection (b) of this section."

PART III. DISCLOSURES FOR ANNUITIES AND LIFE INSURANCE

SECTION 3. The title of Article 60 of Chapter 58 of the General Statutes reads as rewritten:

"Article 60.

~~Regulation of Life Insurance Solicitation.~~

Standards of Disclosure for Annuities and Life Insurance."

SECTION 3.1. Article 60 of Chapter 58 of the General Statues is amended by designating G.S. 58-60-1 through G.S. 58-60-35 as:

"Part 1. Regulation of Life Insurance Solicitation."

SECTION 3.2. G.S. 58-60-1 reads as rewritten:

"**§ 58-60-1. ~~Purpose of Article.~~Short title; purpose.**

(a) This Part may be cited as the "Life Insurance Disclosure Act".

(b) The purpose of this ~~Article~~ Part is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for ~~their~~ the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and to improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

This ~~Article~~ Part does not prohibit an insurer ~~to use~~ from using additional material ~~which~~ that is not in violation of Articles 1 through 64 of this Chapter nor any other statute or regulation."

SECTION 3.3. G.S. 58-60-5 reads as rewritten:

"**§ 58-60-5. ~~Scope of Article;~~ Scope; exemptions.**

(a) Except as otherwise provided in this ~~Article,~~ Part, this ~~Article~~ Part applies to any solicitation, negotiation or procurement of life insurance occurring within this State. This ~~Article~~ Part applies to any issuer of a life insurance contract, including fraternal benefit societies.

(b) Unless otherwise specifically included, this ~~Article~~ Part does not apply to:

(1) ~~Annuities,~~Individual group annuity contracts.

(2) Credit life ~~insurance,~~insurance.

(3) Group life ~~insurance,~~ insurance (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy).

(4) Life insurance policies issued in connection with pension and welfare plans as defined by and that are subject to the federal Employee Retirement Income Security Act of 1974 ~~(ERISA),~~(ERISA).

(5) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(c) The policy summary in this ~~Article~~ Part is not required for policies that are sold subject to rules adopted by the Commissioner for life insurance illustrations."

SECTION 3.4. G.S. 58-60-10(7)k. reads as rewritten:

"k. The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in subparagraph e of this paragraph shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space. If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor, it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in this State."

SECTION 3.5. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Home Service Life Insurance Solicitation.

"**§ 58-60-40. Title and reference.**

This Part may be cited as the "Home Service Disclosure Act".

"**§ 58-60-45. Purpose.**

The purpose of this Part is to establish standards that ensure that meaningful information is provided to the purchasers of insurance policies distributed through the home service distribution system.

"**§ 58-60-50. Definitions.**

As used in this Part:

(1) "Home service distribution system" means a system in which insurance products are marketed, sold, or serviced by agents in person in the home or business of the insured, owner, or premium payor in assigned territories and may be identified as "debits". The policies are issued on a monthly or more frequent premium payment basis and agents are charged with the responsibilities of servicing the debit, which may include the collection of premium payments in the home or designated location on a monthly or more frequent basis, along with other services normally rendered.

(2) "Small face amount life insurance policy" means an insurance policy or certificate with a face amount of fifteen thousand dollars ($15,000) or less.

"**§ 58-60-55. General disclosure requirements.**

(a) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80 and at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) Whether the policyholder is allowed to change the method of premium payment and any conditions for that change;

(2) Whether or not at a subsequent date a policyholder may combine multiple policies from the same insurance company, its affiliates, and its subsidiaries into one policy in order to provide like or enhanced coverage at a comparable or reduced premium to eliminate duplicate administrative costs associated with each policy and, if the option is available:

a. Whether a policyholder will be subject to underwriting when combining multiple policies into one policy; and

b. Whether a policyholder will be subject to a new contestable period, waiting periods, etc., when combining multiple policies into one policy.

(b) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80, an insurer issuing a small face amount life insurance policy through the home service distribution system shall provide the current disclosure included in Appendix A of the NAIC's Home Service Disclosure Model if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

If, for a particular policy form, the cumulative premiums may exceed the face for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefit attributable to the riders.

If an illustration has been provided that satisfies the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code, the disclosure requirements of subsection (b) of this section are deemed to have been met.

"**§ 58-60-60. Disclosure of payment methods.**

In accordance with the disclosure simplification standards set forth in G.S. 58-60-80, at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) What premium savings may be realized by a different method or less frequent mode of premium payment.

(2) That premiums are still due and payable by the person responsible for premium payments even when an agent does not collect the premiums.

(3) The mailing address for payment of premiums to the company.

(4) That the consumer is entitled to receive a receipt for premium payments when premium payments are made in cash or in person.

"**§ 58-60-65. Evidence of payment.**

For every premium collected on a policy of life or disability insurance marketed, sold, or serviced through the home service distribution system in this State, the agent, solicitor, or broker, or any employee acting on the agent, solicitor, or broker's behalf, collecting or receiving the premium in person shall:

(1) Maintain and furnish to the policyholder a receipt indicating payment of premiums, which shall provide the payor with clearly understandable, written evidence of payment at the time the premium is collected. At a minimum it shall clearly show:

a. The name of the payor.

b. The name of insured under each policy covered by the premium.

c. The amount paid.

d. The date paid.

e. The date paid-to-status of the policy.

f. The policy number.

g. The face amount and type of policy for which the payment will be credited.

h. The signature of the agent.

i. The agent's printed name and unique identification number.

j. The name, complete address, and phone number of the insurer.

(2) Remit to the insurer's home office or applicable district office, or deposit in a fiduciary account, the premium collected on behalf of the policyholder within 10 days of receipt from the premium payor or policy owner. In the event that the insurer utilizes an accounting system based on a monthly list bill, all premiums collected shall be credited from the date of collection. The premium shall be fully applied to that particular account.

"**§ 58-60-70. Proof of policy delivery.**

If an insurance policy marketed, sold, or serviced through the home service distribution system is delivered by an agent, solicitor, or broker, or an employee acting on the agent, solicitor, or broker's behalf, a receipt shall be signed by the purchaser and the agent acknowledging delivery to the purchaser of the policy or contract and the disclosures required by this Part. The receipt shall contain the name of the purchaser, the policy or contract number, the amount of the initial premium payment, and the date the delivery was completed. A policy shall be deemed to have been received six months after the date of issuance if the insured has paid premiums pursuant to the contract. All delivery receipts required by this section shall be retained by the company for not less than three years following delivery and shall be available for inspection upon request of the Commissioner.

"**§ 58-60-75. Company duties.**

Each insurer engaged in the home service distribution system in this State shall make available to the Commissioner for review:

(1) Established written procedures to audit agencies engaged in the home service system of distribution of policies in this State; and

(2) Proof of audits conducted periodically that reasonably ensure that the premium payor's records accurately reflect the premium due date and premium paid-to-status of the policy or policies purchased.

"**§ 58-60-80. Minimum disclosure language standards.**

All disclosure forms shall comply with the readability standards in Article 38 of this Chapter. It is presumed the disclosure form in Appendix A of the NAIC's Home Service Disclosure Model Act complies with this Part."

SECTION 3.6. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Small Face Amount Life Insurance Solicitation.

"**§ 58-60-85. Title and reference.**

This Part may be cited as the "Small Face Amount Life Insurance Disclosure Act".

"**§ 58-60-90. Purpose; intent; and scope.**

(a) The purpose of this Part is to establish standards that ensure meaningful information is provided to the purchasers of small face amount policies.

(b) This Part applies to any life insurance policy or certificate with an initial face amount of fifteen thousand dollars ($15,000) or less.

(c) This Part does not apply to:

(1) Variable life insurance.

(2) Individual and group annuity contracts.

(3) Credit life insurance.

(4) Group or individual policies of life insurance issued to members of an employer group or other permitted group where:

a. Every plan of coverage was selected by the employer or other group representative;

b. Some portion of the premium is paid by the group or through payroll deduction; and

c. Group underwriting or simplified underwriting is used.

(5) Policies and certificates where an illustration has been provided pursuant to the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code.

"**§ 58-60-95. Disclosure requirements.**

(a) An insurer issuing a small face amount policy shall provide the current disclosure included in Appendix A of the NAIC Disclosure for Small Face Amount Life Insurance Policies Model Act if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

(b) If, for a particular policy form, the cumulative premiums may exceed the face amount for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

(c) Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefits attributable to the riders.

"**§ 58-60-100. Insurer duties.**

The insurer and its producers shall have a duty to provide information to policyholders or certificate holders that ask questions about the disclosure statement."

SECTION 3.7. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 4. Regulation of Annuity Solicitation.

"**§ 58-60-105. Title and reference.**

This Part may be cited as the "Annuity Disclosure Act".

"**§ 58-60-110. Purpose; intent; scope.**

(a) The purpose of this Part is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. This Part specifies the minimum information that must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this Part is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

(b) This Part applies to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products.

(2) Immediate and deferred annuities that contain no nonguaranteed elements.

(3) Annuities used to fund:

a. An employee pension plan, which is covered by the Employee Retirement Income Security Act (ERISA);

b. A plan described by section 401(a), 401(k), or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

c. A governmental or church plan defined in section 414, or a deferred compensation plan of a state or local government or a tax exempt organization under section 457, of the Internal Revenue Code;

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

e. Structured settlement annuities;

f. Charitable gift annuities; or

g. Funding agreements.

(c) This Part shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement.

"**§ 58-60-115. Definitions.**

As used in this Part:

(1) "Annuity buyer's guide" or "buyer's guide" means the current NAIC Model Buyer's Guide to Fixed Deferred Annuities, including any appendix thereto.

(2) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only or from both determinable and guaranteed elements.

(5) "Disclosure document" means the document the contents of which are described in G.S. 58-60-125.

(6) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(7) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity".

(8) "Guaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(9) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(10) "Structured settlement annuity" means a "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

"**§ 58-60-120. Standards for the disclosure document and buyer's guide.**

(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant, at or before the time of application, shall be given both the disclosure document described in G.S. 58-60-125 and a copy of the buyer's guide.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the buyer's guide no later than five business days after the completed application is received by the insurer.

(1) With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a buyer's guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(2) With respect to an application received via the Internet:

a. Taking reasonable steps to make the buyer's guide available for viewing and printing on the insurer's web site shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's web site shall be deemed to satisfy the requirement that the disclosure

document be provided no later than five business days after receipt of the application.

(3) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the Department for a free annuity buyer's guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity buyer's guide.

(c) Where the buyer's guide and disclosure document are not provided at or before the time of application, a free look period of no less than 15 days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under State law or regulation.

"**§ 58-60-125. Contents of disclosure document.**

At a minimum, all of the following information shall be included in the disclosure document required under this Part:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity.

(2) The insurer's name and address.

(3) A description of the contract and its benefits, emphasizing its long-term nature, including the following, if appropriate:

a. The guaranteed, nonguaranteed, and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate.

b. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed.

c. Periodic income options both on a guaranteed and nonguaranteed basis.

d. Any value reductions caused by withdrawals from or surrender of the contract.

e. How values in the contract can be accessed.

f. The death benefit, if available, and how it will be calculated.

g. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract.

h. The impact of any rider, such as a long-term care rider.

(4) The specific dollar amount or percentage charges and fees with an explanation of how they apply.

(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

"**§ 58-60-130. Report to contract owners.**

For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least all of the following information:

(1) The beginning and end date of the current report period.

(2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period.

(3) The total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period.

(4) The amount of outstanding loans, if any, as of the end of the current report period."

PART IV. EMPLOYER-OWNED LIFE INSURANCE DISCLOSURE

SECTION 4. G.S. 58-58-75 reads as rewritten:

"**§ 58-58-75. Insurable interest in life and physical ability of employee or agent.**

(a) An employer, whether a partnership, joint venture, business trust, mutual association, corporation, any other form of business organization, or one or more individuals, or any religious, educational, or charitable corporation, institution or body, has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an employee for the benefit of such employer. Any principal shall have a life insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an agent for the benefit of such principal.

(b) An employee described in subsection (a) of this section shall be insured for the benefit of an employer described in subsection (a) of this section only if the employee receives written notification from the insurer of the existence of the coverage. The notice shall be provided to the employee within 30 days after the effective date of the coverage and shall include a statement that the employer may maintain the life insurance coverage on the employee even after employment is terminated.

(c) For nonkey or nonmanagerial employees, the aggregate amount of coverage shall be reasonably related to the benefits provided to the employees in the aggregate.

(d) With respect to employer-provided pension and welfare plans, the life insurance coverage purchased to finance the plans may only cover the lives of those employees and retirees who, at the time their lives were first insured under the plan, either are participants, or would be eligible to participate, upon the satisfaction of age, service, or similar eligibility criteria in the plan."

PART V. ACTUARIALLY SOUND ASSOCIATION GROUP ACCIDENT AND HEALTH PREMIUM RATES

SECTION 5. G.S. 58-51-80(1a) reads as rewritten:

"(1a) Under a policy issued to an association or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of 500 persons and shall have been

organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least five years; and shall have a constitution and bylaws that provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members; (ii) except for credit unions, the association or associations collect dues or solicit contributions from members; and (iii) the members, other than associate members, have voting privileges and representation on the governing board and committees. The policy is subject to the following requirements:

a. The policy may insure members of the association or associations, employees of the association or associations, or employees of members, or one or more of the preceding or all of any class or classes for the benefit of persons other than the employee's employer.

b. The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members. The premium rates for each association policy shall be developed, and applied to the certificates thereunder, on an actuarially sound basis.

c. Repealed by Session Laws 1997-259, s. 8."

PART VI. INDIVIDUAL ACCIDENT AND HEALTH INSURANCE RENEWAL RATE LIMITATIONS

SECTION 6. G.S. 58-51-95 is amended by adding a new subsection to read:

"(g) For policies subject to this section, an individual health insurer shall not increase an individual's renewal premium for continued health insurance coverage under the terms of the individual's health insurance policy based on any health status-related factors in relation to the individual or a dependent of the individual, including:

(1) Health status.

(2) Medical condition (including both physical and mental illnesses).

(3) Claims experience.

(4) Receipt of health care.

(5) Medical history."

PART VII. LARGE GROUP HEALTH INSURANCE SOLE PROPRIETOR EXEMPTION

SECTION 7. G.S. 58-65-60 is amended by adding a new subsection to read:

"(e3) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 7.1. G.S. 58-67-85 is amended by adding a new subsection to read:

"(d1) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(1), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 7.2. G.S. 58-51-80(c) reads as rewritten:

"(c) The term "employees" as used in this section shall be deemed to include, for the purposes of insurance hereunder, employees of a single employer, the officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. Employees shall be added to the group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term "employee" is defined as a nonseasonal person who works on a full-time basis, with a normal work week of 30 or more hours and who is otherwise eligible for coverage, but does not include a person who works on a part-time, temporary, or substitute basis. The term "employer" as used herein may be deemed to include the State of North Carolina, any county, municipality or corporation, or the proper officers, as such, of any unincorporated municipality or any department or subdivision of the State, county, such corporation, or municipality determined by conditions pertaining to the employment. When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

PART VIII. NEWBORN COVERAGE REINSTATEMENT

SECTION 8. G.S. 58-51-30(b) reads as rewritten:

"(b) Every health benefit plan, as defined in ~~G.S. 58-3-167,~~ G.S. 58-51-115(a)(1), that provides benefits for any sickness, illness, or disability of any minor child or that provides benefits for any medical treatment or service furnished by a health care provider or institution to any minor child shall provide the benefits for those occurrences beginning with the moment of the child's birth if the birth occurs while the plan is in force. Every health benefit plan shall extend coverage to a newborn child without requirements for prior notification unless an additional premium charge to add the dependent is due. If an additional premium charge is due to cover the dependent, the health benefit plan shall cover the newborn child from the moment of birth if the newborn is enrolled within 30 days after the date of birth. Foster children and adopted children shall be treated the same as newborn infants and eligible for coverage on the same basis upon placement in the foster home or placement for adoption. Every health benefit plan shall extend coverage to a foster child or adopted child without

requirements for prior notification unless an additional premium charge to add the foster child or adopted child is due. If an additional premium charge is due to cover the foster child or adopted child, the health benefit plan shall cover the foster child or adopted child upon placement in the foster home or placement for adoption if the foster child or adopted child is enrolled within 30 days after the placement in the foster home or placement for adoption."

PART IX. LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES TECHNICAL CORRECTIONS

SECTION 9. G.S. 58-51-15(a)(2)b. reads as rewritten:

"b. This policy contains a provision limiting coverage for preexisting conditions. Preexisting conditions are covered under this policy _____ (insert number of months or days, not to exceed one year) after the effective date of coverage. Preexisting conditions mean "those conditions for which medical advice, diagnosis, care, or treatment was received or recommended within the one-year period immediately preceding the effective date of the person's coverage." ~~Credit~~ Except for the excepted benefits described in G.S. 58-68-25(b), credit for having satisfied some or all of the preexisting condition waiting periods under previous health benefits coverage shall be given in accordance with G.S. 58-68-30."

SECTION 9.1. G.S. 58-51-15(h) reads as rewritten:

"(h) Preexisting Condition Exclusion Clarification. – Sub-subdivision (a)(2)b. of this section does not apply ~~to:~~ to

~~(1)~~ ~~Policies~~ policies issued to eligible individuals under G.S. 58-68-60.

~~(2)~~ ~~Excepted benefits as described in G.S. 58-68-25(b).~~"

PART X. SMALL EMPLOYER HEALTH REINSURANCE POOL BOARD AMENDMENTS

SECTION 10. G.S. 58-50-150(b) reads as rewritten:

"(b) Within 30 days after January 1, 1992, the Commissioner shall give notice to all carriers of the time and place for the initial organizational meeting, which shall take place within 90 days after the notice from the Commissioner. The members shall select the initial Board, subject to the Commissioner's approval. The Board shall consist of nine six members. There shall be no more than two members of the Board representing any one carrier. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. The voting rights to determine initial Board membership shall be weighted based upon net group health benefit plan premium derived from this State in the previous calendar year. Thereafter, voting Voting rights shall be based on net group health benefit plan premium derived from small employer business. The Board shall at all times, to the extent possible, include at least one domestic insurance company licensed to transact accident and health insurance, one HMO, one nonprofit hospital or medical service plan. Six Five of the

members of the Board shall be small employer carriers. In approving selection of the Board, the Commissioner shall assure that all members are fairly represented."

PART XI. EQUITABLE ENROLLMENT PERIOD FOR SUPPLEMENTAL MEDICARE PLANS

SECTION 11. G.S. 58-54-45(a) reads as rewritten:

"(a) In addition to any rule adopted under this Article that is directly or indirectly related to open enrollment, an insurer shall at least make standardized Medicare Supplement Plans A, C, and J available to persons eligible for Medicare by reason of disability before age 65. This action shall be taken without regard to medical condition, claims experience, or health status. To be eligible, a person must submit an application during the six-month period beginning with the first month the person first enrolls in Medicare Part B. For those persons that are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision."

PART XII. REVOCATION AND SUSPENSION TECHNICAL CORRECTION

SECTION 12. G.S. 58-3-100(c) reads as rewritten:

"(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgement of the claim shall be one of the following:

(1) A statement made to the claimant or to the claimant's legal representative advising that the claim is being investigated.
(2) Payment of the claim.
(3) A bona fide written offer of settlement.
(4) A written denial of the claim.

A claimant includes an insured, a beneficiary of life or annuity contract, a health care provider, or a health care facility that is responsible for directly making the claim with an insurer, HMO, service corporation, or MEWA. With respect to a claim under an accident, health, or disability policy, if the acknowledgement sent to the claimant indicates that the claim remains under investigation, within 45 days after receipt by the insurer of the initial claim, the insurer shall send a claim status report to the insured and every 45 days thereafter until the claim is paid or denied. The report shall give details sufficient for the insured to understand why processing of the claim has not been completed and whether the insurer needs additional information to process the claim. If the claim acknowledgement includes information about why processing of the claim has not been completed and indicates whether additional information is needed, it may satisfy the requirement for the initial claim status report. This subsection does not apply to HMOs, service corporations, MEWAs or insurers subject to G.S. 58-3-225."

PART XIII. HEALTH BENEFIT PLAN TRAVEL EXPENSES COVERAGE

SECTION 13. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-270. Insurance coverage for travel expenses associated with obtaining care.**

(a) As used in this section, the terms "health benefit plan" and "insurer" have the meaning as found in G.S. 58-3-167.

(b) Each health benefit plan shall provide coverage for reasonable transportation, lodging, and boarding expenses incurred by a covered person to access covered health care services when the insurer, through its referral or network contracting arrangements, requires the covered person to travel more than 250 miles from the covered person's residence to obtain those covered health care services from a network provider.

(c) The coverage specified by this section is limited to transportation, lodging and boarding expenses incurred by a covered person when required by the health plan to travel to access covered health care services as provided in subsection (b) of this section when those health care services are not also available from a network provider who is located within 250 miles of the covered person's residence.

(d) The coverage required by this section shall be subject to plan requirements including any overall health care benefit plan aggregate limitations and shall last for the duration of the health care benefit plan's coverage of the treatment subject to this section. An insurer may utilize a per diem limit for the expenses specified in subsection (c) of this section as long as the limit reflects the high-low per diem method as annually published by the Internal Revenue Service or the Domestic Per Diem Rate as published annually by the federal General Services Administration in the area where the health care services are being obtained. All travel, lodging, and boarding expenses in excess of the insurer's per diem or the health benefit plan's aggregate limits shall be the responsibility of the covered person.

(e) An insurer may require prior approval of all expenses subject to this section.

(f) The coverage required by this section shall apply only to those travel, lodging, and boarding expenses incurred by the covered person accessing covered health care services in accordance with this section. If the covered person accessing covered health care services in accordance with this section is a minor, the health benefit plan shall also cover the expenses specified in subsection (c) of this section for a parent or guardian who accompanies the minor."

PART XIV. CREDIT INSURANCE AMENDMENTS

SECTION 14. G.S. 58-57-5 is amended by adding a new subdivision to read:

"(5a) "Critical period coverage" means insurance coverage for which benefits are limited to a stated number of payments or the payments end with the expiration of the policy, whichever is less."

SECTION 14.1. G.S. 58-57-50(b) reads as rewritten:

"(b) The refund of premiums for decreasing term credit life insurance shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy. The refund of premiums for ~~decreasing term credit life insurance~~

~~in transactions of 60 months duration or less and the refund of premiums for~~ single interest credit property insurance and single interest physical damage insurance shall be equal to the amount computed by the sum of digits formula known as the "Rule of 78." ~~The refund of premiums for decreasing term credit life insurance in transactions of more than 60 months duration shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy.~~ The refund of premiums for level term credit life insurance and dual interest credit property insurance and dual interest physical damage insurance shall be equal to the pro rata unearned gross premiums."

SECTION 14.2. G.S. 58-57-55 reads as rewritten:

"**§ 58-57-55. Issuance of policies.**

All policies of credit life insurance and credit accident and health insurance shall be issued only by an insurer authorized to do business in this State and shall be issued only through holders of licenses or authorizations issued by the Commissioner. ~~All~~ With the exception of credit insurance issued in accordance with G.S. 58-57-105, all policies of credit life insurance and credit accident and health insurance shall be delivered or issued for delivery in this ~~State only by an insurer authorized to do an insurance business therein, and shall be issued only through holders of licenses or authorizations issued by the Commissioner.~~ State. The enrollment of debtors under a group policy issued to a creditor and authorized under this Article shall not constitute the issuance of a policy of insurance."

SECTION 14.3. G.S. 58-57-60 is amended by adding a new subsection to read:

"(d) A claim acknowledgement shall be sent to the claimant within 30 days after receiving written or electronic notice of the claim. Acknowledgement shall include the following:

(1) A statement made to the insured or the claimant advising that the claim is being investigated.

(2) Payment of the claim.

(3) A bona fide written offer of settlement.

(4) A written denial of the claim."

SECTION 14.4. G.S. 58-57-110 reads as rewritten:

"**§ 58-57-110. Credit unemployment insurance rate standards; policy provisions.**

(a) Each year the Commissioner shall prescribe a minimum incurred loss ratio standard requirement to develop a premium rate reasonable in relation to the benefits provided by credit unemployment insurance coverage. The following requirements must be met:

(1) Coverage is provided or offered, with or without underwriting, to all debtors regardless of age who are working for salary, wages, or other employment income for at least 30 hours per week and have done so for 12 consecutive months;

(2) Coverage sets forth a definition of involuntary unemployment as a loss of employment income that may include, but is not limited to, loss caused by layoff, general strike, termination of employment, or lockout;

(3) Coverage does not contain any exclusion except: debts with irregular monthly payments; voluntary forfeiture of salary, wages, or other employment income; resignation; retirement; sickness, disease, or normal pregnancy; or loss of income due to termination as a result of willful misconduct that is a violation of some established, definite rule of conduct, a forbidden act, or willful dereliction of duty, or criminal ~~misconduct.~~misconduct;

(4) As long as there is no required time period limitation for registration, the insured may be required to register with the State unemployment office in order to qualify for benefit payments under the credit unemployment coverage. Qualification for State unemployment benefits shall not be required in order to qualify for benefit payments under the credit unemployment coverage.

(b) The Commissioner may approve other policy provisions and coverages consistent with the purposes of unemployment coverage.

(c) Joint coverage rates for credit unemployment insurance shall be one and two-thirds (1 2/3) times the approved single rate of coverage.

(d) The refund provision for credit unemployment insurance shall be equal to the pro rata unearned gross premium."

PART XV. MEDICARE SUPPLEMENTAL INSURANCE POLICY CHANGES

SECTION 15. G.S. 58-54-25(f) reads as rewritten:

"(f) No insurer shall use attained age as a structure or methodology for its Medicare supplement insurance rates. ~~rates unless the structure or methodology is fully disclosed to the applicant at the time of application or to the insured at the time of delivery if the purchase is by mail order. All types of solicitation materials shall clearly indicate that the premiums are based on attained age, which means that those premiums will increase each year. The Commissioner shall prescribe by rule the format and content of the attained age rating disclosure notice. The notice shall include:~~

~~(1) A statement that attained age rating means that rates increase as the insured ages or by the age group in which the insured is.~~

~~(2) An illustration based on actual attained age that states the dollar amount of premium increase for the insured over a period of not less than 10 policy years and that displays the life expectancy of the insured at the beginning of the period.~~

~~(3) A statement that premiums for other Medicare supplement policies that are on issue age bases do not increase as the insured ages.~~

~~(4) A statement that other Medicare supplement policies that are on issue age bases should be compared to policies on attained age bases.~~"

SECTION 15.1 G.S. 58-54-10 reads as rewritten:

"**§ 58-54-10. Standards for policy provisions.**

(a) No policy in force in this State shall contain benefits that duplicate benefits provided by Medicare.

(b) The Commissioner shall adopt rules to establish specific standards for provisions of policies. Such standards shall be in addition to and in accordance with applicable State law. No requirement of State law relating to minimum required policy benefits, other than the minimum standards contained in this Article, applies to policies. The standards may include without limitation to: terms of renewability; initial and subsequent conditions of eligibility; nonduplication of coverage; probationary periods; benefit limitations, exceptions, and reductions; elimination periods; requirements for replacement; recurrent conditions; and definitions of terms.

(c) The Commissioner may adopt rules that specify prohibited policy provisions not otherwise specifically authorized by State law that, in the opinion of the Commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a policy.

(d) Notwithstanding any other provision of State law, a policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. A policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(e) Repealed by Session Laws 1991 (Regular Session, 1992), c. 815, s. 3.

(f) An insurer shall use issue age as a structure or methodology for its Medicare supplement insurance rates. An insurer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the Commissioner.

(g) Except as otherwise provided in this subsection, an insurer shall not file for approval with the Commissioner more than one policy or certificate of each type for each standard policy. An insurer may offer, with the approval of the Commissioner, up to four additional policies or certificates of the same type for the same standard policy, one for each of the following:

(1) The inclusion of new or innovative benefits.

(2) The addition of either direct response or agent marketing methods.

(3) The addition of either guaranteed issue or underwritten coverage.

(4) The offering of coverage to individuals eligible for Medicare by reason of disability.

As used in this section, "type" means an individual policy, a group policy, an individual Medicare select policy, or a group Medicare select policy.

(h) Except as otherwise provided in this subsection, an insurer shall continue to make available for purchase any policy or certificate issued on and after January 1, 2004 that has been approved by the Commissioner. A policy or certificate shall not be considered to be available for purchase unless the insurer has actively offered the policy or certificate for sale in the immediately preceding 12 month period.

(i) An insurer may discontinue the availability of a policy or certificate if the insurer provides to the Commissioner in writing its decision to discontinue at least 30 days prior to the effective date of the discontinuance. Upon providing notice to the Commissioner, the insurer shall no longer offer for sale the policy or certificate in this State. An insurer that discontinues the availability of a policy or certificate pursuant to

this subsection shall not file for approval a new policy or certificate of the same type for the same standard Medicare supplement policy as the discontinued policy or certificate for a period of five years from the effective date of the discontinuance. The period of discontinuance may be reduced if the Commissioner determines that a shorter period is appropriate. The following shall be considered a discontinuance under this subsection:

(1) The sale or transfer of the insurer's Medicare supplement business to another insurer.

(2) A change in the rating structure or methodology of the policy or certificate unless:

a. The insurer provides actuarial memorandum, in a form and manner prescribed by the Commissioner, describing the manner in which the revised rating structure or methodology and resultant rates differ from the existing rating structure or methodology and rates, and

b. The insurer does not subsequently put into effect a change of rates or rating factors that would cause a change in the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum. The Commissioner may approve a change to the differential if the Commissioner finds the change to be in the public interest."

PART XVI. EFFECT OF HEADINGS, SEVERABILITY, AND EFFECTIVE DATES

SECTION 16. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SECTION 16.1. If any section or provision of this act is declared unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional, preempted, or otherwise invalid.

SECTION 16.2. Section 1 of this act becomes effective October 1, 2005. Sections 2 through 8 and Sections 9, 9.1, 13, 14, 14.1, 14.2, 14.3, 14.4, 15, and 15.1 of this act become effective January 1, 2004, and apply to policies or certificates issued or renewed on or after that date. The remainder of this act is effective when it becomes law and applies to policies or certificates issued or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 339

Committee Substitute Favorable 4/24/03
Committee Substitute #2 Favorable 4/30/03

Short Title: Life and Health Insurance Omnibus.-AB (Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

AN ACT TO CONFORM NORTH CAROLINA'S THIRD PARTY ADMINISTRATOR ARTICLE TO REVISIONS TO THE NAIC MODEL THIRD PARTY ADMINISTRATOR STATUTE; REQUIRE GROUP ANNUITY INSURERS TO ISSUE INDIVIDUAL CERTIFICATES OF COVERAGE TO EACH ANNUITANT; REORGANIZE ARTICLE 60 OF CHAPTER 58 OF THE GENERAL STATUTES AND AMEND CURRENT DISCLOSURE REQUIREMENTS FOR SOLICITATION OF LIFE INSURANCE PRODUCTS AND ANNUITIES; REQUIRE INSURERS TO NOTIFY EMPLOYEES OF THE EXISTENCE OF EMPLOYER-OWNED LIFE INSURANCE POLICIES WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF COVERAGE; REQUIRE THAT ASSOCIATION PREMIUM RATES FOR ACCIDENT AND HEALTH INSURANCE BE ACTUARIALLY SOUND AND THAT ASSOCIATIONS BE RATED AS A SINGLE GROUP WHEN THE COVERAGE PROVIDED IS NOT EMPLOYER-BASED; LIMIT AN INDIVIDUAL ACCIDENT AND HEALTH INSURER'S USE OF AN INDIVIDUAL'S OWN CLAIMS' EXPERIENCE TO DEVELOP THE INDIVIDUAL'S RENEWAL RATE; EXEMPT A SOLE PROPRIETOR FROM THE FULL-TIME BASIS OR THIRTY-HOUR WORKWEEK REQUIREMENTS TO BE ELIGIBLE FOR LARGE GROUP HEALTH COVERAGE LIKE THE PROPRIETOR'S FULL-TIME EMPLOYEES; CORRECT AN INADVERTENT CROSS-REFERENCE IN ORDER TO REAPPLY NEWBORN COVERAGE TO A MORE COMPREHENSIVE GROUP OF INSURERS; TECHNICALLY CORRECT AN OMISSION REGARDING PROVISIONS GOVERNING PREEXISTING CONDITIONS FOR LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES; DECREASE THE TOTAL NUMBER OF MEMBERS THAT SERVE ON THE SMALL EMPLOYER REINSURANCE POOL BOARD FROM NINE TO SIX; ALLOW PERSONS RETROACTIVELY ENROLLED IN MEDICARE PART B

THE SAME SIX-MONTH OPEN ENROLLMENT PERIOD FOR MEDICARE SUPPLEMENT PLANS AS PERSONS WHO ENROLLED IN MEDICARE PART B WITHOUT A RETROACTIVE EFFECTIVE DATE OF COVERAGE; TECHNICALLY CORRECT THE REVOCATION AND SUSPENSION LAW TO INCLUDE A BENEFICIARY OF A LIFE OR ANNUITY CONTRACT AS A CLAIMANT; MANDATE HEALTH BENEFIT COVERAGE FOR DESIGNATED TRAVEL EXPENSES WHEN THE REQUIRED DISTANCE TRAVELED THRESHOLD IS MET; TO REQUIRE RATE METHODOLOGY UNDER MEDICARE SUPPLEMENTAL INSURANCE POLICIES TO BE BASED ON ISSUE AGE AND TO MAKE OTHER CHANGES TO THE LAW PERTAINING TO MEDICARE SUPPLEMENTAL INSURANCE POLICIES; AND MAKE TECHNICAL CORRECTIONS TO THE CREDIT INSURANCE LAWS.

The General Assembly of North Carolina enacts:

PART I. THIRD PARTY ADMINISTRATOR ACT REWRITE

SECTION 1. G.S. 58-56-2 is repealed.

SECTION 1.1. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-3. Definitions.**

As used in this Article:

(1) "Administrator", "third party administrator", and "TPA" mean a person who directly or indirectly underwrites, collects, or charges premiums from, or adjusts or settles claims on, residents of this State in connection with life, annuity, or health coverage offered or provided by an insurer, except any of the following:

a. An employer, or a wholly owned direct or indirect subsidiary of an employer, on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer.

b. A union on behalf of its members.

c. An insurer that is authorized to transact insurance in this State pursuant to Articles 1 through 67 of this Chapter.

d. An insurance producer licensed to sell life, annuity, or health coverage in this State, whose activities are limited exclusively to the sale of insurance.

e. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors.

f. A trust and its trustees, agents, and employees acting pursuant to a trust established in conformity with 29 U.S.C. § 186.

g. A trust exempt from taxation under section 501(a) of the Internal Revenue Code, its trustees and employees acting pursuant to the trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account which meets the requirements of section 401(f) of the Internal Revenue Code.

h. A credit union or a financial institution that is subject to supervision or examination by federal or State banking authorities, or a mortgage lender, to the extent it collects and remits premiums to licensed insurance producers or to limited lines producers or authorized insurers in connection with loan payments.

i. A credit card issuing company that advances for and collects insurance premiums or charges from its credit card holders who have authorized collection.

j. A person who adjusts or settles claims in the normal course of that person's practice or employment as a licensed attorney and who does not collect charges or premiums in connection with life, annuity, or health coverage.

k. An adjuster licensed by this State whose activities are limited to adjustment of claims.

l. A person licensed as a managing general agent in this State, whose activities are limited exclusively to the scope of activities conveyed under the license.

m. An administrator who is affiliated with an insurer and who only performs the contractual duties (between the administrator and the insurer) of an administrator for the direct and assumed insurance business of the affiliated insurer. The insurer is responsible for the acts of the administrator and is responsible for providing all of the administrator's books and records to the Commissioner, upon a request from the Commissioner.

(2) "Affiliate or affiliated" means an entity or person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Commissioner" means the Commissioner of Insurance of this State.

(4) "Control" means the term as defined in G.S. 58-19-5(2).

(5) "GAAP" means United States generally accepted accounting principles consistently applied.

(6) "Home state" means the District of Columbia and any state or territory of the United States in which an administrator is incorporated or maintains its principal place of business. If neither the state in which the administrator is incorporated nor the state in which it maintains its principal place of business has adopted the NAIC Third Party Administrator Statute, or a substantially similar law governing administrators, the administrator may declare another state in which it conducts business to be its "home state".

(7) "Insurance producer" means a person who sells, solicits, or negotiates a contract of insurance as those terms are defined in this Article.

(8) "Insurer" means an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health

maintenance organization organized under Article 67 of this Chapter, and a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(9) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(10) "Nonresident administrator" means a person who is applying for licensure or is licensed in any state other than the administrator's home state.

(11) "Person" means an individual or a business entity.

(12) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(13) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(14) "Underwrites" or "underwriting" includes the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer or self-funded plan and also includes the overall planning and coordinating of a benefits program.

(15) "Uniform Application" means the current version of the NAIC Uniform Application for Third Party Administrators."

SECTION 1.2. G.S. 58-56-6 reads as rewritten:

"**§ 58-56-6. Written agreement necessary.**

(a) No TPA may act as a TPA without a written agreement between the TPA and the insurer. The written agreement shall be retained as part of the official records of both the insurer and the TPA for the duration of the agreement and for five years thereafter. The agreement shall contain all provisions required by this Article, ~~to the extent those requirements apply to the functions performed by the TPA.~~ except insofar as those requirements do not apply to the functions performed by the TPA.

(b) The agreement shall include a statement of duties that the TPA is expected to perform on behalf of the insurer and the ~~kinds of insurance the TPA is to be authorized to administer.~~lines, classes, or types of insurance for which the TPA is to be authorized to administer. The agreement shall provide for underwriting or other standards pertaining to the business underwritten by the insurer.

(c) The insurer or TPA may, with written notice, terminate the written agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the TPA during the pendency of any dispute regarding the cause for termination of the agreement. The insurer ~~must~~ shall fulfill any lawful obligations with respect to policies affected by the agreement, regardless of any dispute between the insurer and the TPA."

SECTION 1.3. G.S. 58-56-16 reads as rewritten:

"**§ 58-56-16. Records to be kept.**

(a) Every TPA shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance record keeping and must be maintained for a period of at least five years after the date of their creation.

~~(b) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. The Commissioner shall keep confidential any trade secrets contained in those books and records, including the identity and addresses of policyholders and certificate holders, except that the Commissioner may use the information in any judicial or administrative proceeding instituted against the TPA.~~

(c) The insurer shall own the records generated by the TPA pertaining to the insurer, but the TPA shall retain the right to continuing access to books and records to permit the TPA to fulfill all of its contractual obligations to insured parties, claimants, and the insurer.

(d) In the event the insurer and the TPA cancel their agreement, notwithstanding the provisions of subsection (a) of this section, the TPA may, by written agreement with the insurer, transfer all records to a new TPA rather than retain them for five years. In this case, the new TPA shall acknowledge, in writing, that it is responsible for retaining the records of the prior TPA as required in subsection (a) of this section.

(e) The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. Any documents, materials, or other information in the possession or control of the Commissioner that are furnished by a TPA, insurer, insurance producer, or an employee or agent thereof acting on behalf of the TPA, insurer, or insurance producer, or obtained by the Commissioner in an investigation shall be confidential by law and privileged, shall not constitute a public record as defined by G.S. 132-1, shall not be subject to subpoena, shall not be subject to discovery, and shall not be admissible in evidence in any private civil action. However, the Commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.

(f) Neither the Commissioner nor any person who receives documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (e) of this section.

(g) In order to assist in the performance of the Commissioner's duties, the Commissioner:

(1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (e) of this section, with other State, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, and with State, federal, and international law enforcement authorities, provided

that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

(2) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(3) May enter into agreements governing sharing and use of information consistent with this subsection.

(h) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (g) of this section.

(i) Nothing in this Article shall prohibit the Commissioner from releasing final, adjudicated actions including for-cause terminations that are open to public inspection pursuant to Chapter 132 of the General Statutes or to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or its subsidiaries."

SECTION 1.4. G.S. 58-56-51 is repealed.

SECTION 1.5. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-52. Home state certificate of authority or license.**

(a) A person shall apply to be a TPA in its home state upon the Uniform Application and shall receive a certificate of authority or license from the Commissioner of its home state prior to performing any function of a TPA in this State. Each application shall be accompanied by a nonrefundable filing fee of one hundred dollars ($100.00).

(b) The Uniform Application shall include or be accompanied by the following information and documents:

(1) All basic organizational documents of the applicant, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, and other applicable documents and all amendments to those documents.

(2) The bylaws, rules, regulations, or similar documents regulating the internal affairs of the applicant.

(3) NAIC Biographical Affidavit for the individuals who are responsible for the conduct of affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership,

association, or limited liability company; any shareholders or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the applicant; and any other person who exercises control or influence over the affairs of the applicant.

(4) Audited annual financial statements or reports for the two most recent fiscal years that prove that the applicant has a positive net worth. If the applicant has been in existence for less than two fiscal years, the Uniform Application shall include financial statements or reports, certified by an officer of the applicant and prepared in accordance with GAAP, for any completed fiscal years and for any month during the current fiscal year for which the financial statements or reports have been completed. The applicant shall also include any other information the Commissioner requires in order to review the current financial condition of the applicant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include all of the following:

a. Amounts shown on the consolidated audited financial report shall be shown on the worksheet.

b. Amounts for each entity shall be stated separately.

c. Explanations of consolidating and eliminating entries.

(5) A statement describing the business plan including information on staffing levels and activities proposed in this State and nationwide. The plan shall provide details setting forth the applicant's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping, and underwriting.

(6) Any other pertinent information required by the Commissioner.

(c) A TPA licensed or applying for licensure under this section shall make available for inspection by the Commissioner copies of all contracts with insurers or other persons utilizing the services of the TPA.

(d) A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

(e) The Commissioner may refuse to issue a certificate of authority or license if the Commissioner determines that the TPA, or any individual responsible for the conduct of affairs of the TPA, is not competent, trustworthy, financially responsible, or of good personal and business reputation, has had an insurance or an administrator certificate of authority or license denied or revoked for cause by any jurisdiction, or if the Commissioner determines that any of the grounds set forth in G.S. 58-56-72 exists with respect to the TPA.

(f) A certificate of authority or license issued under this section shall remain valid, unless surrendered, suspended, or revoked by the Commissioner, for so long as the TPA continues in business in this State and remains in compliance with this Article.

(g) A TPA licensed or applying for licensure under this section shall immediately notify the Commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a certificate of authority or license in this State. The Commissioner shall report any such changes to the producer database maintained by the NAIC or affiliates or subsidiaries of the NAIC."

SECTION 1.6. G.S. 58-56-56 is repealed.

SECTION 1.7. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-57. Registration requirement.**

A person who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this State in connection with life, annuity, or health coverage provided by a self-funded plan shall register with the Commissioner annually, verifying its status as herein described in a format prescribed by the Commissioner."

SECTION 1.8. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-62. Annual report and filing.**

(a) Each TPA licensed under G.S. 58-56-52 shall file an annual report for the preceding calendar year with the Commissioner on or before July 1 of each year or within such extension of time as the Commissioner for good cause may grant. The annual report shall include an audited financial statement performed by an independent certified public accountant. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the information required under G.S. 58-56-52(b)(4)a. through c. The report shall be in the form and contain such matters as the Commissioner prescribes and shall be verified by at least two officers of the TPA.

(b) The annual report shall include the complete names and addresses of all insurers with which the administrator had agreements during the preceding fiscal year.

(c) At the time of filing its annual report, the administrator shall pay a nonrefundable filing fee of one hundred dollars ($100.00).

(d) The Commissioner shall review the most recently filed annual report of each administrator on or before September 1 of each year. Upon completion of its review, the Commissioner shall either:

(1) Issue a certification to the administrator that the annual report shows that the administrator has a positive net worth as evidenced by audited financial statements and is currently licensed and in good standing, or noting any deficiencies found in the annual report and financial statements; or

(2) Update any electronic database maintained by the National Association of Insurance Commissioners, or its affiliates or subsidiaries, indicating that the annual report shows that the

administrator has a positive net worth as evidenced by audited financial statements and is in compliance with existing law, or noting any deficiencies found in the annual report."

SECTION 1.9. G.S. 58-56-66 is repealed.

SECTION 1.10. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-67. Nonresident administrator certificate of authority.**

(a) Unless a TPA has obtained a home state certificate of authority or license in this State under G.S. 58-56-52, any TPA who performs administrator duties in this State shall obtain a nonresident administrator certificate of authority or license in accordance with this section by filing with the Commissioner the Uniform Application accompanied by a letter of certification from the home state of the TPA. In lieu of requiring a TPA to file a letter of certification with the Uniform Application, the Commissioner may verify the nonresident administrator's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners or its affiliates or subsidiaries.

(b) A TPA shall not be eligible for a nonresident administrator certificate of authority or license under this section if it does not hold a certificate of authority as a resident in a home state that has adopted the NAIC Third Party Administrator Statute or a substantially similar law governing TPAs.

(c) Except as provided in subsections (b) and (h) of this section, the Commissioner shall issue to the TPA a nonresident administrator certificate of authority or license promptly upon receipt of a complete application.

(d) Unless notified by the Commissioner that the Commissioner is able to verify the nonresident TPA's home state certificate of authority or license status through an electronic database maintained by the National Association of Insurance Commissioners, or its affiliates or subsidiaries, each nonresident TPA annually shall file a statement that its home state administrator certificate of authority or license remains in force and has not been revoked or suspended by its home state during the preceding year. The statement required by this subsection shall be filed by November 1 each year.

(e) At the time of filing the statement required under subsection (d) of this section or if the Commissioner has notified the nonresident administrator that the Commissioner is able to verify the nonresident administrator's home state certificate of authority or license status through an electronic database, the nonresident TPA shall pay, no later than November 1, a nonrefundable filing fee of one hundred dollars ($100.00).

(f) A TPA licensed or applying for licensure under this section shall produce its accounts, records, and files for examination, and make its officers available to give information with respect to its affairs, as often as reasonably required by the Commissioner.

(g) A nonresident TPA is not required to hold a nonresident administrator certificate of authority or license in this State if the TPA's duties in this State are limited to the administration of a group policy or plan of insurance and no more than a total of 100 persons insured for all plans reside in this State.

(h) The Commissioner may refuse to issue a nonresident administrator certificate of authority or license, or delay the issuance of a nonresident administrator certificate of authority or license, if the Commissioner determines that, due to events or information obtained subsequent to the home state's licensure of the TPA, the nonresident TPA cannot satisfy the requirements of this Article or that grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license. If the Commissioner refuses to issue a certificate of authority of license pursuant to this section, the Commissioner shall give written notice of its determination to the Commissioner of the home state, and the Commissioner may delay the issuance of a nonresident administrator certificate of authority to the nonresident TPA until the Commissioner determines that the administrator can satisfy the requirements of this Article and that no grounds exist for the home state's revocation or suspension of the administrator's home state certificate of authority or license."

SECTION 1.11. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-72. Grounds for denial, suspension, or revocation of certificate of authority.**

(a) The certificate of authority or license of a TPA shall be denied, suspended, or revoked if the Commissioner finds that the TPA:

(1) Is in an unsound financial condition;

(2) Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this State hazardous or injurious to insured persons or the public; or

(3) Has failed to pay any judgment rendered against it in this State within 60 days after the judgment has become final.

(b) The Commissioner may, after notice and opportunity for hearing, deny, suspend, or revoke the certificate of authority or license of a TPA if the Commissioner finds that the TPA:

(1) Has violated any lawful rule or order of the Commissioner or any provision of the insurance laws of this State;

(2) Has refused to be examined or to produce its accounts, records, and files for examination, or if any individual responsible for the conduct of affairs of the TPA has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination when required by the Commissioner, including:

a. Members of the board of directors, board of trustees, executive committee, or other governing board or committee;

b. The principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company;

c. Any shareholder or member holding directly or indirectly ten percent (10%) or more of the voting stock, voting securities, or voting interest of the TPA; and

d. Any other person who exercises control or influence over the affairs of the TPA;

(3) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the TPA to secure full payment or settlement of such claims;

(4) Fails, at any time, to meet any qualification for which issuance of the certificate could have been refused had the failure then existed and been known to the Commissioner;

(5) Or any of the individuals responsible for the conduct of its affairs has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether adjudication was withheld, including:

a. Members of the board of directors, board of trustees, executive committee or other governing board or committee;

b. The principal officers in the case of a corporation or the partners or members in the case of a partnership, association, or limited liability company;

c. Any shareholder or member holding directly or indirectly ten percent or more of its voting stock, voting securities, or voting interest; and

d. Any other person who exercises control or influence over its affairs;

(6) Is under suspension or revocation in another state; or

(7) Has failed to timely file its annual report pursuant to G.S. 58-56-62 if a resident administrator or its statement and filing fee, as applicable, pursuant to G.S. 58-56-67(d) and (e) if a nonresident administrator.

(c) The Commissioner may, without advance notice or hearing, immediately suspend the certificate of authority or license of a TPA if the Commissioner finds that one or more of the following circumstances exist:

(1) The TPA is insolvent or impaired.

(2) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the TPA has been commenced in any state.

(3) The financial condition or business practices of the TPA otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this State.

(d) If the Commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of authority issued under this part, the Commissioner may, in lieu of suspension or revocation, impose a fine upon the TPA."

SECTION 1.12. Article 56 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-56-73. Prohibited practices.**

No person shall act as, offer to act as, or hold himself or herself out as a TPA in this State without a valid domestic or nonresident administrator certificate of authority issued by the Commissioner."

PART II. GROUP ANNUITY CONTRACTS

SECTION 2. G.S. 58-58-145 reads as rewritten:

"**§ 58-58-145. Group annuity contracts defined; ~~requirements.~~requirements; issuance of individual certificates.**

(a) Any policy or contract, except a joint, reversionary or survivorship annuity contract, whereby annuities are payable to more than one person, is a group annuity contract. The person, firm or corporation to whom or to which such contract is issued, as herein provided, is the holder of the contract. The term "annuitant" means any person to whom or which payments are made under the group annuity contract. No authorized insurer shall deliver or issue for delivery in this State any group annuity contract except upon a group of annuitants that conforms to the following: under a contract issued to an employer, or to the trustee of a fund established by an employer or two or more employers in the same industry or kind of business, the stipulated payments on which shall be paid by the holder of such contract either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the employees covered by such contract, and providing a plan of retirement annuities under a plan which permits all of the employees of such employer or of any specified class or classes thereof to become annuitants. Any such group of employees may include retired employees, and may include officers and managers as employees, and may include the employees of subsidiary or affiliated corporations of a corporation employer, and may include the individual proprietors, partners and employees of affiliated individuals and firms controlled by the holders through stock ownership, contract or otherwise.

(b) The insurer of a group annuity contract shall issue to the policyholder, within 30 days of the effective date of the group annuity contract, an individual certificate for delivery to each annuitant which:

(1) Identifies the annuity to which the annuitant is entitled.

(2) States the name of the person to whom the annuity is payable.

(3) Discloses all of the rights and obligations of the insurer, the policyholder, the annuitant, and the persons to whom the annuity is payable with respect to the group annuity contract.

G.S. 58-3-150 applies to the form of the individual certificate required by this subsection.

(c) Each group annuity contract shall include a provision that the insurer will issue to the policyholder within 30 days of the effective date of the contract, for delivery to each annuitant, an individual certificate setting forth the information described in subsection (b) of this section."

PART III. DISCLOSURES FOR ANNUITIES AND LIFE INSURANCE

SECTION 3. The title of Article 60 of Chapter 58 of the General Statutes reads as rewritten:

"Article 60.

~~Regulation of Life Insurance Solicitation.~~

Standards of Disclosure for Annuities and Life Insurance."

SECTION 3.1. Article 60 of Chapter 58 of the General Statues is amended by designating G.S. 58-60-1 through G.S. 58-60-35 as:

"Part 1. Regulation of Life Insurance Solicitation."

SECTION 3.2. G.S. 58-60-1 reads as rewritten:

"**§ 58-60-1. ~~Purpose of Article.~~Short title; purpose.**

(a) This Part may be cited as the "Life Insurance Disclosure Act".

(b) The purpose of this ~~Article~~ Part is to require insurers to deliver to purchasers of life insurance, information which will improve the buyer's ability to select the most appropriate plan of life insurance for ~~their~~ the buyer's needs, improve the buyer's understanding of the basic features of the policy which has been purchased or which is under consideration and to improve the ability of the buyer to evaluate the relative costs of similar plans of life insurance.

This ~~Article~~ Part does not prohibit an insurer ~~to use~~ from using additional material ~~which~~ that is not in violation of Articles 1 through 64 of this Chapter nor any other statute or regulation."

SECTION 3.3. G.S. 58-60-5 reads as rewritten:

"**§ 58-60-5. ~~Scope of Article;~~ Scope; exemptions.**

(a) Except as otherwise provided in this ~~Article,~~ Part, this ~~Article~~ Part applies to any solicitation, negotiation or procurement of life insurance occurring within this State. This ~~Article~~ Part applies to any issuer of a life insurance contract, including fraternal benefit societies.

(b) Unless otherwise specifically included, this ~~Article~~ Part does not apply to:

(1) ~~Annuities,~~Individual group annuity contracts.

(2) Credit life ~~insurance,~~insurance.

(3) Group life ~~insurance,~~ insurance (except for disclosures relating to preneed funeral contracts or prearrangements; these disclosure requirements shall extend to the issuance or delivery of certificates as well as to the master policy).

(4) Life insurance policies issued in connection with pension and welfare plans as defined by and that are subject to the federal Employee Retirement Income Security Act of 1974 ~~(ERISA),~~(ERISA).

(5) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account.

(c) The policy summary in this ~~Article~~ Part is not required for policies that are sold subject to rules adopted by the Commissioner for life insurance illustrations."

SECTION 3.4. G.S. 58-60-10(7)k. reads as rewritten:

"k. The date on which the Policy Summary is prepared.

The Policy Summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in subparagraph e of this paragraph shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space. If the insurer makes a material revision in the terms and conditions under which it will limit its right to change any nonguaranteed factor, it shall, no later than the first policy anniversary following the revision, advise each affected policy owner residing in this State."

SECTION 3.5. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Home Service Life Insurance Solicitation.

"**§ 58-60-40. Title and reference.**

This Part may be cited as the "Home Service Disclosure Act".

"**§ 58-60-45. Purpose.**

The purpose of this Part is to establish standards that ensure that meaningful information is provided to the purchasers of insurance policies distributed through the home service distribution system.

"**§ 58-60-50. Definitions.**

As used in this Part:

(1) "Home service distribution system" means a system in which insurance products are marketed, sold, or serviced by agents in person in the home or business of the insured, owner, or premium payor in assigned territories and may be identified as "debits". The policies are issued on a monthly or more frequent premium payment basis and agents are charged with the responsibilities of servicing the debit, which may include the collection of premium payments in the home or designated location on a monthly or more frequent basis, along with other services normally rendered.

(2) "Small face amount life insurance policy" means an insurance policy or certificate with a face amount of fifteen thousand dollars ($15,000) or less.

"**§ 58-60-55. General disclosure requirements.**

(a) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80 and at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) Whether the policyholder is allowed to change the method of premium payment and any conditions for that change;

(2) Whether or not at a subsequent date a policyholder may combine multiple policies from the same insurance company, its affiliates, and its subsidiaries into one policy in order to provide like or enhanced coverage at a comparable or reduced premium to eliminate duplicate administrative costs associated with each policy and, if the option is available:

a. Whether a policyholder will be subject to underwriting when combining multiple policies into one policy; and

b. Whether a policyholder will be subject to a new contestable period, waiting periods, etc., when combining multiple policies into one policy.

(b) In accordance with the disclosure simplification standards set forth in G.S. 58-60-80, an insurer issuing a small face amount life insurance policy through the home service distribution system shall provide the current disclosure included in Appendix A of the NAIC's Home Service Disclosure Model if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

If, for a particular policy form, the cumulative premiums may exceed the face for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefit attributable to the riders.

If an illustration has been provided that satisfies the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code, the disclosure requirements of subsection (b) of this section are deemed to have been met.

"**§ 58-60-60. Disclosure of payment methods.**

In accordance with the disclosure simplification standards set forth in G.S. 58-60-80, at the time an insurance policy is issued through the home service distribution system, the insurer shall disclose:

(1) What premium savings may be realized by a different method or less frequent mode of premium payment.

(2) That premiums are still due and payable by the person responsible for premium payments even when an agent does not collect the premiums.

(3) The mailing address for payment of premiums to the company.

(4) That the consumer is entitled to receive a receipt for premium payments when premium payments are made in cash or in person.

"**§ 58-60-65. Evidence of payment.**

For every premium collected on a policy of life or disability insurance marketed, sold, or serviced through the home service distribution system in this State, the agent, solicitor, or broker, or any employee acting on the agent, solicitor, or broker's behalf, collecting or receiving the premium in person shall:

(1) Maintain and furnish to the policyholder a receipt indicating payment of premiums, which shall provide the payor with clearly understandable, written evidence of payment at the time the premium is collected. At a minimum it shall clearly show:
   a. The name of the payor.
   b. The name of insured under each policy covered by the premium.
   c. The amount paid.
   d. The date paid.
   e. The date paid-to-status of the policy.
   f. The policy number.
   g. The face amount and type of policy for which the payment will be credited.
   h. The signature of the agent.
   i. The agent's printed name and unique identification number.
   j. The name, complete address, and phone number of the insurer.

(2) Remit to the insurer's home office or applicable district office, or deposit in a fiduciary account, the premium collected on behalf of the policyholder within 10 days of receipt from the premium payor or policy owner. In the event that the insurer utilizes an accounting system based on a monthly list bill, all premiums collected shall be credited from the date of collection. The premium shall be fully applied to that particular account.

"**§ 58-60-70. Proof of policy delivery.**

If an insurance policy marketed, sold, or serviced through the home service distribution system is delivered by an agent, solicitor, or broker, or an employee acting on the agent, solicitor, or broker's behalf, a receipt shall be signed by the purchaser and the agent acknowledging delivery to the purchaser of the policy or contract and the disclosures required by this Part. The receipt shall contain the name of the purchaser, the policy or contract number, the amount of the initial premium payment, and the date the delivery was completed. A policy shall be deemed to have been received six months after the date of issuance if the insured has paid premiums pursuant to the contract. All delivery receipts required by this section shall be retained by the company for not less than three years following delivery and shall be available for inspection upon request of the Commissioner.

"**§ 58-60-75. Company duties.**

Each insurer engaged in the home service distribution system in this State shall make available to the Commissioner for review:

(1) Established written procedures to audit agencies engaged in the home service system of distribution of policies in this State; and

(2) Proof of audits conducted periodically that reasonably ensure that the premium payor's records accurately reflect the premium due date and premium paid-to-status of the policy or policies purchased.

"**§ 58-60-80. Minimum disclosure language standards.**

All disclosure forms shall comply with the readability standards in Article 38 of this Chapter. It is presumed the disclosure form in Appendix A of the NAIC's Home Service Disclosure Model Act complies with this Part."

SECTION 3.6. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Small Face Amount Life Insurance Solicitation.

"**§ 58-60-85. Title and reference.**

This Part may be cited as the "Small Face Amount Life Insurance Disclosure Act".

"**§ 58-60-90. Purpose; intent; and scope.**

(a) The purpose of this Part is to establish standards that ensure meaningful information is provided to the purchasers of small face amount policies.

(b) This Part applies to any life insurance policy or certificate with an initial face amount of fifteen thousand dollars ($15,000) or less.

(c) This Part does not apply to:

(1) Variable life insurance.

(2) Individual and group annuity contracts.

(3) Credit life insurance.

(4) Group or individual policies of life insurance issued to members of an employer group or other permitted group where:

a. Every plan of coverage was selected by the employer or other group representative;

b. Some portion of the premium is paid by the group or through payroll deduction; and

c. Group underwriting or simplified underwriting is used.

(5) Policies and certificates where an illustration has been provided pursuant to the requirements of Title 11, Chapter 4, Section .0500 of the North Carolina Administrative Code.

"**§ 58-60-95. Disclosure requirements.**

(a) An insurer issuing a small face amount policy shall provide the current disclosure included in Appendix A of the NAIC Disclosure for Small Face Amount Life Insurance Policies Model Act if at any point in time over the term of the policy the cumulative premiums paid may exceed the face amount of the policy at that point in time. The required disclosure shall be provided to the policy owner or certificate holder no later than at the time the policy or certificate is delivered. The disclosure shall not be attached to the policy but may be delivered with the policy.

(b) If, for a particular policy form, the cumulative premiums may exceed the face amount for some demographic or benefit combination but not for all combinations, the insurer may choose to either:

(1) Provide the disclosure only in those circumstances where the premiums may exceed the face amount; or

(2) Provide the disclosure for all demographic and benefit combinations.

(c) Cumulative premiums shall include premiums paid for riders. However, the face amount shall not include the benefits attributable to the riders.

"**§ 58-60-100. Insurer duties.**

The insurer and its producers shall have a duty to provide information to policyholders or certificate holders that ask questions about the disclosure statement."

SECTION 3.7. Article 60 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 4. Regulation of Annuity Solicitation.

"**§ 58-60-105. Title and reference.**

This Part may be cited as the "Annuity Disclosure Act".

"**§ 58-60-110. Purpose; intent; scope.**

(a) The purpose of this Part is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. This Part specifies the minimum information that must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this Part is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

(b) This Part applies to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products.

(2) Immediate and deferred annuities that contain no nonguaranteed elements.

(3) Annuities used to fund:

a. An employee pension plan, which is covered by the Employee Retirement Income Security Act (ERISA);

b. A plan described by section 401(a), 401(k), or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

c. A governmental or church plan defined in section 414, or a deferred compensation plan of a state or local government or a tax exempt organization under section 457, of the Internal Revenue Code;

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

e. Structured settlement annuities;

f. Charitable gift annuities; or

g. Funding agreements.

(c) This Part shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers and there is a

direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement.

"**§ 58-60-115. Definitions.**

As used in this Part:

(1) "Annuity buyer's guide" or "buyer's guide" means the current NAIC Model Buyer's Guide to Fixed Deferred Annuities, including any appendix thereto.

(2) "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only or from both determinable and guaranteed elements.

(5) "Disclosure document" means the document the contents of which are described in G.S. 58-60-125.

(6) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(7) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity".

(8) "Guaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(9) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest-based credits, charges, or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(10) "Structured settlement annuity" means a "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

"**§ 58-60-120. Standards for the disclosure document and buyer's guide.**

(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant, at or before the time of application, shall be given both the disclosure document described in G.S. 58-60-125 and a copy of the buyer's guide.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the buyer's guide no later than five business days after the completed application is received by the insurer.

(1) With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a buyer's guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(2) With respect to an application received via the Internet:

a. Taking reasonable steps to make the buyer's guide available for viewing and printing on the insurer's web site shall be deemed to satisfy the requirement that the buyer's guide be provided no later than five business days after receipt of the application.

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's web site shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(3) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the Department for a free annuity buyer's guide. In lieu of the foregoing statement, an insurer may include a statement

that the prospective applicant may contact the insurer for a free annuity buyer's guide.

(c) Where the buyer's guide and disclosure document are not provided at or before the time of application, a free look period of no less than 15 days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under State law or regulation.

"**§ 58-60-125. Contents of disclosure document.**

At a minimum, all of the following information shall be included in the disclosure document required under this Part:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity.

(2) The insurer's name and address.

(3) A description of the contract and its benefits, emphasizing its long-term nature, including the following, if appropriate:

a. The guaranteed, nonguaranteed, and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate.

b. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed.

c. Periodic income options both on a guaranteed and nonguaranteed basis.

d. Any value reductions caused by withdrawals from or surrender of the contract.

e. How values in the contract can be accessed.

f. The death benefit, if available, and how it will be calculated.

g. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract.

h. The impact of any rider, such as a long-term care rider.

(4) The specific dollar amount or percentage charges and fees with an explanation of how they apply.

(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

"**§ 58-60-130. Report to contract owners.**

For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least all of the following information:

(1) The beginning and end date of the current report period.

(2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period.
(3) The total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period.
(4) The amount of outstanding loans, if any, as of the end of the current report period."

PART IV. EMPLOYER-OWNED LIFE INSURANCE DISCLOSURE

SECTION 4. G.S. 58-58-75 reads as rewritten:

"**§ 58-58-75. Insurable interest in life and physical ability of employee or agent.**

(a) An employer, whether a partnership, joint venture, business trust, mutual association, corporation, any other form of business organization, or one or more individuals, or any religious, educational, or charitable corporation, institution or body, has an insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an employee for the benefit of such employer. Any principal shall have a life insurable interest in and the right to insure the physical ability or the life, or both the physical ability and the life, of an agent for the benefit of such principal.

(b) An employee described in subsection (a) of this section shall be insured for the benefit of an employer described in subsection (a) of this section only if the employee receives written notification from the insurer of the existence of the coverage. The notice shall be provided to the employee within 30 days after the effective date of the coverage and shall include a statement that the employer may maintain the life insurance coverage on the employee even after employment is terminated.

(c) For nonkey or nonmanagerial employees, the aggregate amount of coverage shall be reasonably related to the benefits provided to the employees in the aggregate.

(d) With respect to employer-provided pension and welfare plans, the life insurance coverage purchased to finance the plans may only cover the lives of those employees and retirees who, at the time their lives were first insured under the plan, either are participants, or would be eligible to participate, upon the satisfaction of age, service, or similar eligibility criteria in the plan."

PART V. ACTUARIALLY SOUND ASSOCIATION GROUP ACCIDENT AND HEALTH PREMIUM RATES

SECTION 5. G.S. 58-51-80(1a) reads as rewritten:

"(1a) Under a policy issued to an association or to a trust or to the trustee or trustees of a fund established, created, or maintained for the benefit of members of one or more associations. The association or associations shall have at the outset a minimum of 500 persons and shall have been organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least five years; and shall have a constitution and bylaws that provide that (i) the association or associations hold regular meetings not less than annually to further purposes of the members; (ii) except for credit unions, the

association or associations collect dues or solicit contributions from members; and (iii) the members, other than associate members, have voting privileges and representation on the governing board and committees. The policy is subject to the following requirements:

a. The policy may insure members of the association or associations, employees of the association or associations, or employees of members, or one or more of the preceding or all of any class or classes for the benefit of persons other than the employee's employer.

b. The premium for the policy shall be paid from funds contributed by the association or associations, or by employer members, or by both, or from funds contributed by the covered persons or from both the covered persons and the association, associations, or employer members. The premium rates for each association policy shall be developed, and applied to the certificates thereunder, on an actuarially sound basis.

c. Repealed by Session Laws 1997-259, s. 8."

PART VI. INDIVIDUAL ACCIDENT AND HEALTH INSURANCE RENEWAL RATE LIMITATIONS

SECTION 6. G.S. 58-51-95 is amended by adding a new subsection to read:

"(g) For policies subject to this section, an individual health insurer shall not increase an individual's renewal premium for continued health insurance coverage under the terms of the individual's health insurance policy based on any health status-related factors in relation to the individual or a dependent of the individual, including:

(1) Health status.
(2) Medical condition (including both physical and mental illnesses).
(3) Claims experience.
(4) Duration from issue.
(5) Receipt of health care.
(6) Medical history.
(7) Genetic information."

PART VII. LARGE GROUP HEALTH INSURANCE SOLE PROPRIETOR EXEMPTION

SECTION 7. G.S. 58-65-60 is amended by adding a new subsection to read:

"(e3) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 7.1. G.S. 58-67-85 is amended by adding a new subsection to read:

"(d1) When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(1), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

SECTION 7.2. G.S. 58-51-80(c) reads as rewritten:

"(c) The term "employees" as used in this section shall be deemed to include, for the purposes of insurance hereunder, employees of a single employer, the officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners, and employees of individuals and firms of which the business is controlled by the insured employer through stock ownership, contract or otherwise. Employees shall be added to the group coverage no later than 90 days after their first day of employment. Employment shall be considered continuous and not be considered broken except for unexcused absences from work for reasons other than illness or injury. The term "employee" is defined as a nonseasonal person who works on a full-time basis, with a normal work week of 30 or more hours and who is otherwise eligible for coverage, but does not include a person who works on a part-time, temporary, or substitute basis. The term "employer" as used herein may be deemed to include the State of North Carolina, any county, municipality or corporation, or the proper officers, as such, of any unincorporated municipality or any department or subdivision of the State, county, such corporation, or municipality determined by conditions pertaining to the employment. When determining employee eligibility for a large employer, as defined in G.S. 58-68-25(10), an individual proprietor, owner, or operator shall be defined as an "employee" for the purpose of obtaining coverage under the employee group health plan and shall not be held to a minimum workweek requirement as imposed on other eligible employees."

PART VIII. NEWBORN COVERAGE REINSTATEMENT

SECTION 8. G.S. 58-51-30(b) reads as rewritten:

"(b) Every health benefit plan, as defined in ~~G.S. 58-3-167,~~ G.S. 58-51-115(a)(1), that provides benefits for any sickness, illness, or disability of any minor child or that provides benefits for any medical treatment or service furnished by a health care provider or institution to any minor child shall provide the benefits for those occurrences beginning with the moment of the child's birth if the birth occurs while the plan is in force. Every health benefit plan shall extend coverage to a newborn child without requirements for prior notification unless an additional premium charge to add the dependent is due. If an additional premium charge is due to cover the dependent, the health benefit plan shall cover the newborn child from the moment of birth if the newborn is enrolled within 30 days after the date of birth. Foster children and adopted children shall be treated the same as newborn infants and eligible for coverage on the same basis upon placement in the foster home or placement for adoption. Every health benefit plan shall extend coverage to a foster child or adopted child without requirements for prior notification unless an additional premium charge to add the foster child or adopted child is due. If an additional premium charge is due to cover the foster

child or adopted child, the health benefit plan shall cover the foster child or adopted child upon placement in the foster home or placement for adoption if the foster child or adopted child is enrolled within 30 days after the placement in the foster home or placement for adoption."

PART IX. LIMITED HEALTH, SUPPLEMENTAL HEALTH, AND SPECIFIED DISEASE POLICIES TECHNICAL CORRECTIONS

SECTION 9. G.S. 58-51-15(a)(2)b. reads as rewritten:

"b. This policy contains a provision limiting coverage for preexisting conditions. Preexisting conditions are covered under this policy _____ (insert number of months or days, not to exceed one year) after the effective date of coverage. Preexisting conditions mean "those conditions for which medical advice, diagnosis, care, or treatment was received or recommended within the one-year period immediately preceding the effective date of the person's coverage." ~~Credit~~ Except for the excepted benefits described in G.S. 58-68-25(b), credit for having satisfied some or all of the preexisting condition waiting periods under previous health benefits coverage shall be given in accordance with G.S. 58-68-30."

SECTION 9.1. G.S. 58-51-15(h) reads as rewritten:

"(h) Preexisting Condition Exclusion Clarification. – Sub-subdivision (a)(2)b. of this section does not apply ~~to:~~ to

~~(1)~~ ~~Policies~~ policies issued to eligible individuals under G.S. 58-68-60.

~~(2) Excepted benefits as described in G.S. 58-68-25(b).~~"

PART X. SMALL EMPLOYER HEALTH REINSURANCE POOL BOARD AMENDMENTS

SECTION 10. G.S. 58-50-150(b) reads as rewritten:

"(b) ~~Within 30 days after January 1, 1992, the Commissioner shall give notice to all carriers of the time and place for the initial organizational meeting, which shall take place within 90 days after the notice from the Commissioner.~~ The members shall select the initial Board, subject to the Commissioner's approval. The Board shall consist of ~~nine~~ six members. There shall be no more than two members of the Board representing any one carrier. In determining voting rights at the organizational meeting, each member shall be entitled to vote in person or by proxy. ~~The voting rights to determine initial Board membership shall be weighted based upon net group health benefit plan premium derived from this State in the previous calendar year. Thereafter, voting~~ Voting rights shall be based on net group health benefit plan premium derived from small employer business. The Board shall at all times, to the extent possible, include at least one domestic insurance company licensed to transact accident and health insurance, one HMO, one nonprofit hospital or medical service plan. ~~Six~~ Five of the members of the Board shall be small employer carriers. In approving selection of the Board, the Commissioner shall assure that all members are fairly represented."

PART XI. EQUITABLE ENROLLMENT PERIOD FOR SUPPLEMENTAL MEDICARE PLANS

SECTION 11. G.S. 58-54-45(a) reads as rewritten:

"(a) In addition to any rule adopted under this Article that is directly or indirectly related to open enrollment, an insurer shall at least make standardized Medicare Supplement Plans A, C, and J available to persons eligible for Medicare by reason of disability before age 65. This action shall be taken without regard to medical condition, claims experience, or health status. To be eligible, a person must submit an application during the six-month period beginning with the first month the person first enrolls in Medicare Part B. For those persons that are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision."

PART XII. REVOCATION AND SUSPENSION TECHNICAL CORRECTION

SECTION 12. G.S. 58-3-100(c) reads as rewritten:

"(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgement of the claim shall be one of the following:

(1) A statement made to the claimant or to the claimant's legal representative advising that the claim is being investigated.
(2) Payment of the claim.
(3) A bona fide written offer of settlement.
(4) A written denial of the claim.

A claimant includes an insured, a beneficiary of life or annuity contract, a health care provider, or a health care facility that is responsible for directly making the claim with an insurer, HMO, service corporation, or MEWA. With respect to a claim under an accident, health, or disability policy, if the acknowledgement sent to the claimant indicates that the claim remains under investigation, within 45 days after receipt by the insurer of the initial claim, the insurer shall send a claim status report to the insured and every 45 days thereafter until the claim is paid or denied. The report shall give details sufficient for the insured to understand why processing of the claim has not been completed and whether the insurer needs additional information to process the claim. If the claim acknowledgement includes information about why processing of the claim has not been completed and indicates whether additional information is needed, it may satisfy the requirement for the initial claim status report. This subsection does not apply to HMOs, service corporations, MEWAs or insurers subject to G.S. 58-3-225."

PART XIII. HEALTH BENEFIT PLAN TRAVEL EXPENSES COVERAGE

SECTION 13. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-3-270. Insurance coverage for travel expenses associated with obtaining care.

(a) As used in this section, the terms "health benefit plan" and "insurer" have the meaning as found in G.S. 58-3-167.

(b) Each health benefit plan shall provide coverage for reasonable transportation, lodging, and boarding expenses incurred by a covered person to access covered health care services when the insurer, through its referral or network contracting arrangements, requires the covered person to travel more than 250 miles from the covered person's residence to obtain those covered health care services from a network provider.

(c) The coverage specified by this section is limited to transportation, lodging and boarding expenses incurred by a covered person when required by the health plan to travel to access covered health care services as provided in subsection (b) of this section when those health care services are not also available from a network provider who is located within 250 miles of the covered person's residence.

(d) The coverage required by this section shall be subject to plan requirements including any overall health care benefit plan aggregate limitations and shall last for the duration of the health care benefit plan's coverage of the treatment subject to this section. An insurer may utilize a per diem limit for the expenses specified in subsection (c) of this section as long as the limit reflects the high-low per diem method as annually published by the Internal Revenue Service or the Domestic Per Diem Rate as published annually by the federal General Services Administration in the area where the health care services are being obtained. All travel, lodging, and boarding expenses in excess of the insurer's per diem or the health benefit plan's aggregate limits shall be the responsibility of the covered person.

(e) An insurer may require prior approval of all expenses subject to this section.

(f) The coverage required by this section shall apply only to those travel, lodging, and boarding expenses incurred by the covered person accessing covered health care services in accordance with this section. If the covered person accessing covered health care services in accordance with this section is a minor, the health benefit plan shall also cover the expenses specified in subsection (c) of this section for a parent or guardian who accompanies the minor."

PART XIV. CREDIT INSURANCE AMENDMENTS

SECTION 14. G.S. 58-57-5 is amended by adding a new subdivision to read:

"(5a) "Critical period coverage" means insurance coverage for which benefits are limited to a stated number of payments or the payments end with the expiration of the policy, whichever is less."

SECTION 14.1. G.S. 58-57-50(b) reads as rewritten:

"(b) The refund of premiums for decreasing term credit life insurance shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy. The refund of premiums for ~~decreasing term credit life insurance in transactions of 60 months duration or less and the refund of premiums for~~ single interest credit property insurance and single interest physical damage insurance shall be

equal to the amount computed by the sum of digits formula known as the "Rule of 78." ~~The refund of premiums for decreasing term credit life insurance in transactions of more than 60 months duration shall be equal to the premium that would be charged for the remaining term and amount of coverage in the policy.~~ The refund of premiums for level term credit life insurance and dual interest credit property insurance and dual interest physical damage insurance shall be equal to the pro rata unearned gross premiums."

SECTION 14.2. G.S. 58-57-55 reads as rewritten:

"**§ 58-57-55. Issuance of policies.**

All policies of credit life insurance and credit accident and health insurance shall be issued only by an insurer authorized to do business in this State and shall be issued only through holders of licenses or authorizations issued by the Commissioner. ~~All~~ With the exception of credit insurance issued in accordance with G.S. 58-57-105, all policies of credit life insurance and credit accident and health insurance shall be delivered or issued for delivery in this ~~State only by an insurer authorized to do an insurance business therein, and shall be issued only through holders of licenses or authorizations issued by the Commissioner.~~ State. The enrollment of debtors under a group policy issued to a creditor and authorized under this Article shall not constitute the issuance of a policy of insurance."

SECTION 14.3. G.S. 58-57-60 is amended by adding a new subsection to read:

"(d) A claim acknowledgement shall be sent to the claimant within 30 days after receiving written or electronic notice of the claim. Acknowledgement shall include the following:

(1) A statement made to the insured or the claimant advising that the claim is being investigated.

(2) Payment of the claim.

(3) A bona fide written offer of settlement.

(4) A written denial of the claim."

SECTION 14.4. G.S. 58-57-110 reads as rewritten:

"**§ 58-57-110. Credit unemployment insurance rate standards; policy provisions.**

(a) Each year the Commissioner shall prescribe a minimum incurred loss ratio standard requirement to develop a premium rate reasonable in relation to the benefits provided by credit unemployment insurance coverage. The following requirements must be met:

(1) Coverage is provided or offered, with or without underwriting, to all debtors regardless of age who are working for salary, wages, or other employment income for at least 30 hours per week and have done so for 12 consecutive months;

(2) Coverage sets forth a definition of involuntary unemployment as a loss of employment income that may include, but is not limited to, loss caused by layoff, general strike, termination of employment, or lockout;

(3) Coverage does not contain any exclusion except: debts with irregular monthly payments; voluntary forfeiture of salary, wages, or other

employment income; resignation; retirement; sickness, disease, or normal pregnancy; or loss of income due to termination as a result of willful misconduct that is a violation of some established, definite rule of conduct, a forbidden act, or willful dereliction of duty, or criminal ~~misconduct.~~misconduct;

(4) As long as there is no required time period limitation for registration, the insured may be required to register with the State unemployment office in order to qualify for benefit payments under the credit unemployment coverage. Qualification for State unemployment benefits shall not be required in order to qualify for benefit payments under the credit unemployment coverage.

(b) The Commissioner may approve other policy provisions and coverages consistent with the purposes of unemployment coverage.

(c) Joint coverage rates for credit unemployment insurance shall be one and two-thirds (1 2/3) times the approved single rate of coverage.

(d) The refund provision for credit unemployment insurance shall be equal to the pro rata unearned gross premium."

PART XV. MEDICARE SUPPLEMENTAL INSURANCE POLICY CHANGES

SECTION 15. G.S. 58-54-25(f) reads as rewritten:

"(f) No insurer shall use attained age as a structure or methodology for its Medicare supplement insurance rates. ~~rates unless the structure or methodology is fully disclosed to the applicant at the time of application or to the insured at the time of delivery if the purchase is by mail order. All types of solicitation materials shall clearly indicate that the premiums are based on attained age, which means that those premiums will increase each year. The Commissioner shall prescribe by rule the format and content of the attained age rating disclosure notice. The notice shall include:~~

~~(1) A statement that attained age rating means that rates increase as the insured ages or by the age group in which the insured is.~~

~~(2) An illustration based on actual attained age that states the dollar amount of premium increase for the insured over a period of not less than 10 policy years and that displays the life expectancy of the insured at the beginning of the period.~~

~~(3) A statement that premiums for other Medicare supplement policies that are on issue age bases do not increase as the insured ages.~~

~~(4) A statement that other Medicare supplement policies that are on issue age bases should be compared to policies on attained age bases.~~"

SECTION 15.1 G.S. 58-54-10 reads as rewritten:

"**§ 58-54-10. Standards for policy provisions.**

(a) No policy in force in this State shall contain benefits that duplicate benefits provided by Medicare.

(b) The Commissioner shall adopt rules to establish specific standards for provisions of policies. Such standards shall be in addition to and in accordance with applicable State law. No requirement of State law relating to minimum required policy

benefits, other than the minimum standards contained in this Article, applies to policies. The standards may include without limitation to: terms of renewability; initial and subsequent conditions of eligibility; nonduplication of coverage; probationary periods; benefit limitations, exceptions, and reductions; elimination periods; requirements for replacement; recurrent conditions; and definitions of terms.

(c) The Commissioner may adopt rules that specify prohibited policy provisions not otherwise specifically authorized by State law that, in the opinion of the Commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a policy.

(d) Notwithstanding any other provision of State law, a policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. A policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(e) Repealed by Session Laws 1991 (Regular Session, 1992), c. 815, s. 3.

(f) An insurer shall use issue age as a structure or methodology for its Medicare supplement insurance rates. An insurer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the Commissioner.

(g) Except as otherwise provided in this subsection, an insurer shall not file for approval with the Commissioner more than one policy or certificate of each type for each standard policy. An insurer may offer, with the approval of the Commissioner, up to four additional policies or certificates of the same type for the same standard policy, one for each of the following:

(1) The inclusion of new or innovative benefits.

(2) The addition of either direct response or agent marketing methods.

(3) The addition of either guaranteed issue or underwritten coverage.

(4) The offering of coverage to individuals eligible for Medicare by reason of disability.

As used in this section, "type" means an individual policy, a group policy, an individual Medicare select policy, or a group Medicare select policy.

(h) Except as otherwise provided in this subsection, an insurer shall continue to make available for purchase any policy or certificate issued on and after January 1, 2004 that has been approved by the Commissioner. A policy or certificate shall not be considered to be available for purchase unless the insurer has actively offered the policy or certificate for sale in the immediately preceding 12 month period.

(i) An insurer may discontinue the availability of a policy or certificate if the insurer provides to the Commissioner in writing its decision to discontinue at least 30 days prior to the effective date of the discontinuance. Upon providing notice to the Commissioner, the insurer shall no longer offer for sale the policy or certificate in this State. An insurer that discontinues the availability of a policy or certificate pursuant to this subsection shall not file for approval a new policy or certificate of the same type for the same standard Medicare supplement policy as the discontinued policy or certificate for a period of five years from the effective date of the discontinuance. The

period of discontinuance may be reduced if the Commissioner determines that a shorter period is appropriate. The following shall be considered a discontinuance under this subsection:

(1) The sale or transfer of the insurer's Medicare supplement business to another insurer.

(2) A change in the rating structure or methodology of the policy or certificate unless:

a. The insurer provides actuarial memorandum, in a form and manner prescribed by the Commissioner, describing the manner in which the revised rating structure or methodology and resultant rates differ from the existing rating structure or methodology and rates, and

b. The insurer does not subsequently put into effect a change of rates or rating factors that would cause a change in the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum. The Commissioner may approve a change to the differential if the Commissioner finds the change to be in the public interest."

PART XVI. EFFECT OF HEADINGS, SEVERABILITY, AND EFFECTIVE DATES

SECTION 16. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SECTION 16.1. If any section or provision of this act is declared unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional, preempted, or otherwise invalid.

SECTION 16.2. Sections 1 through 8 and Sections 9, 9.1, 13, 14, 14.1, 14.2, 14.3, 14.4, 15, and 15.1 of this act become effective January 1, 2004, and apply to policies or certificates issued or renewed on or after that date. The remainder of this act is effective when it becomes law and applies to policies or certificates issued or renewed on or after that date.

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[signature]	CFSA/UMC

Senate Commerce Committee
Tuesday, June 17, 2003, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 339	Life and Health Insurance Omnibus.-AB	Representative Wright
HB 994	Public Works Exemption.	Representative Williams
HB 1213	Regulate Deferred Deposit.	Representative Grady Representative Culpepper, III

Presentations

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, June 17, 2003 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, June 17, 2003, in Room 1027 of the Legislative Building. Nineteen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced the pages: Will Swearingen of Cary, sponsored by Senator Richard Stevens; Cherelle Dunston of Warrenton sponsored by Senator Robert Holliman; and Christina Dixon of Raleigh, sponsored by Senator Eric Reeves.

Senator Soles introduced Representative Keith Williams to explain the HB 994, Public Works Exemption. Senator Kay Hagan moved the adoption of a committee substitute. The motion carried. Senator Tony Rand moved an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

Senator Soles introduced Representative Tom Wright to discuss HB 339, Life and Health Insurance Omnibus-AB. Senator Phil Berger sent forth an amendment and moved it be adopted. Mr. Frank Folger, representing the Department of Insurance, said the Department has had no complaints with regard to attained age policies over the last 18 months. Ms. Perri Morgan, representing the National Federation of Independent Business, encouraged the committee to pass the amendment. Mr. Bill Hale, representing the American Council of Life Insurers, also spoke in support of the amendment. The motion carried. Senator David Hoyle moved an unfavorable report of the bill, but favorable report of the committee substitute as amended and engrossed into a new committee substitute. The motion carried.

Senator Soles introduced Representative Bill Culpepper to explain HB 1213, Regulate Deferred Deposit. Senator David Hoyle moved the adoption of a committee substitute that contained language worked out between interested parties on issues raised by Amendments 1 and 2 from the meeting of June 10. Senator Soles announced that he was proceeding as though both amendments had been withdrawn and a new proposed committee substitute was before the committee for consideration. Senator Kay Hagan sent forth an amendment (Amendment 3) and moved its adoption. Senator Hoyle spoke in opposition to the amendment. Senator Berger sent forth a substitute amendment and moved its adoption (Amendment 4). Senator Hoyle spoke in support of the substitute amendment. Mr. Josh Stein of the Attorney General's Office of Consumer Protection explained Senator Hagan's amendment and spoke against the substitute amendment. Senator Berger's motion carried with a 10-8 vote. Senator R. B. Sloan sent forth an amendment and moved its adoption (Amendment 5). The motion failed. Ms. Lisa Englekins of Winston-Salem and a customer of a payday lender spoke in opposition to the bill. Ms. Mary Odom, representing the AARP, also spoke against the bill. Senator Hoyle moved an unfavorable report of the bill, but favorable report of the committee substitute as amended and engrossed into a new committee substitute.

The meeting adjourned at 12:05 p.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Wednesday, June 18, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1213** Regulate Deferred Deposit.

Draft Number:	PCS 45163
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **339** Life and Health Insurance Omnibus.-AB

Draft Number:	PCS 30386
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **994** Public Works Exemption.

Draft Number:	PCS 50291
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 1213

Committee Substitute Favorable 4/29/03
Third Edition Engrossed 5/1/03

Short Title: Regulate Deferred Deposit. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO REGULATE DEFERRED DEPOSIT TRANSACTIONS AND TO PROVIDE ADDITIONAL CONSUMER DISCLOSURES AND PROTECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-275 reads as rewritten:

"**§ 53-275. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the term:

(1) "Cashing" means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

(2) "Check-cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration.

(3) "Commission" means the State Banking Commission.

(4) "Commissioner" means the Commissioner of Banks.

(4a) "Deferred deposit transaction" means a check-cashing or similar loan transaction in which a person pays a cash advance to a consumer in return for a check dated on the date it was written and agrees to hold the check for a period of days prior to deposit or presentment, or accepts a postdated check and agrees to hold the check for deposit or presentment at least until the date written on the check. The term shall also include any such arrangement in which a person pays a cash advance in return for an authorization from a consumer for a draft or electronic debit rather than a check.

(4b) "Lender" means the following:

a. Any person or entity that offers or makes a deferred deposit transaction, arranges a deferred deposit transaction for a third party, or acts as an agent for a third party, regardless of whether

the third party is exempt from licensing under this Article or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party.

b. Notwithstanding the foregoing, a state or federally chartered bank, savings and loan association, credit union, or supervised lender shall not be considered a lender for purposes of this Article and shall be specifically exempt from provisions of this Article so long as all of the following are satisfied:

1. It initially advances the loan proceeds to the borrower;
2. It does not sell, assign, or transfer in the aggregate a preponderant economic interest in the deferred deposit transactions to an arranger, agent, or assistant, or an affiliate or subsidiary of the state or federally chartered bank, savings and loan association, credit union, or supervised lender, unless selling, assigning or transferring a preponderant economic interest is permitted by the primary regulator of the state or federally chartered bank, savings and loan association, credit union, or supervised lender; and
3. It develops the deferred deposit transaction program on its own.

c. If a lender offers, arranges, acts as an agent for, or assists a state or federally chartered bank, savings and loan association, credit union, or supervised lender in any way in the making of a deferred deposit transaction and the state or federally chartered bank, savings and loan association, credit union, or supervised lender meets the standards set forth in sub-subdivision b. of this subdivision, the lender shall comply with all other provisions of this Article to the extent they are not preempted by other state or federal laws.

(5) "Licensee" means a person or entity licensed to engage in a check-cashing business under this Article.

(5a) "Loan amount" means the amount financed as defined in Regulation 'Z' of the federal Truth-in-Lending Act (12 C.F.R. § 226.18(b).

(6) "Person" means an individual, partnership, association, or corporation."

SECTION 2. G.S. 53-276 reads as rewritten:

"**§ 53-276. License required.**

No person or other entity may engage in the business of cashing checks, drafts, or money orders for ~~consideration~~ consideration, nor engage in the business of making deferred deposit transactions without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a check or other currency equivalent instead of currency when cashing payment instruments."

SECTION 3. Article 22 of Chapter 53 of the General Statutes is amended by adding the following new sections to read:

"**§ 53-281.1. Deferred deposit transactions permitted.**

Lenders may make deferred deposit transactions pursuant to the following requirements:

(1) The face amount of the deferred deposit check may include a fee but the principal loan amount shall not exceed three hundred dollars ($300.00).

(2) Each deferred deposit check cashed by a lender shall be deemed to be a loan and shall be documented by a written agreement as provided in G.S. 53-281.2.

(3) A lender shall not directly or indirectly charge a fee or other consideration in excess of fifteen percent (15%) of the loan amount, provided the maximum fee charged to a borrower for entering into a deferred deposit transaction shall not exceed forty dollars ($40.00).

(4) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same lender or any affiliate of the lender. A lender shall not, for any consideration, renew or otherwise extend any deferred deposit check or withhold the check from deposit for any period beyond the time set forth in the written agreement, except as allowed under G.S. 53-281.4.

"**§ 53-281.2. Written agreement and disclosures required for deferred deposit transactions.**

(a) Each deferred deposit transaction shall be documented by a written agreement signed by the borrower and the lender. A legible copy of the agreement shall be provided to the borrower.

(b) The written agreement shall contain:

(1) The name and address of the borrower.

(2) The name, local street address, and telephone number of the lender.

(3) The transaction date, which shall be prominently labeled.

(4) The loan amount as defined in G.S. 53-275(5a).

(5) The amount of any fees charged, expressed as both a dollar amount and as an effective annual percentage rate (APR).

(6) The maturity date, which shall be no less than 14 days nor more than 60 days after the transaction date.

(7) The following notices immediately above the borrower's signature line in at least ten-point type: **THIS TRANSACTION IS NOT MEANT TO MEET LONG-TERM FINANCIAL NEEDS AND SHOULD BE USED ONLY TO MEET SHORT-TERM CASH NEEDS. YOU HAVE THE RIGHT TO CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. ON THE NEXT BUSINESS DAY AFTER THE TRANSACTION DATE SHOWN ABOVE. TO CANCEL YOU MUST RETURN ALL OF THE CASH**

PROCEEDS TO THE LENDER. THE LENDER WILL REFUND TO YOU ALL FEES IF YOU CANCEL THIS TRANSACTION.

(c) The written agreement shall be accompanied by a separate paper which contains all disclosures required by the federal Truth-in-Lending Act (12 U.S.C. § 1601, et seq.,) and the federal Reserve Board Regulation 'Z' and the consumer education information. The consumer education information shall be prepared by the Commissioner and shall inform the consumer of matters such as the complaint process through the Commissioner's office, the relative cost of short-term consumer loans, the availability of other forms of credit, the right of the customer to elect a repayment plan, and any other matters the Commissioner thinks are necessary or beneficial to consumers.

(d) The written agreement shall not contain any of the following provisions:

(1) A hold harmless clause.

(2) A confession of judgment clause.

(3) A mandatory arbitration clause that does not comply with the standards set forth in the statement of principles of the National Consumer Dispute Advisory Committee of the American Arbitration Association in effect on the effective date of this Act.

(4) Any provision in which the borrower agrees not to assert a claim or defense arising out of the contract.

(5) Any waiver by the borrower of any provision of this Article.

(e) In addition to providing the written agreement, prior to entering a deferred deposit transaction, the lender shall verbally inform the borrower of the following:

(1) The borrower has the right to cancel the transaction and how the borrower can exercise this right.

(2) The terms of the transaction including the loan amount, the amount of any fees charged, expressed both as a dollar amount and as an annual percentage rate.

(3) The right of the borrower to elect a mandatory repayment plan and how the borrower can exercise this right.

"**§ 53-281.3. Deferred deposit transactions limited.**

(a) A lender shall not knowingly enter into a deferred deposit transaction with a borrower whom the lender knows has other transactions in the aggregate exceeding the principal amount of three hundred dollars ($300.00) or knows would exceed three transactions regardless of value. It shall be mandatory for the lender to meet both of the following conditions:

(1) The borrower signs a certification in substantially the following form: **I UNDERSTAND THAT NORTH CAROLINA LAW PROHIBITS A PERSON FROM HAVING MORE THAN $300.00 IN DEFERRED DEPOSIT CHECKS OUTSTANDING AT ONE TIME. I OWE THE FOLLOWING DEFERRED DEPOSIT AMOUNTS AND NO OTHERS:** (Write the amount you owe and the names of the licensees or write 'NONE'). This certification shall not constitute the basis of a criminal prosecution under G.S. 14-100.

(2) The lender shall verify the accuracy of this certification by:

a. A query of all of the lender's own records, and

b. A query of a subprime credit reporting service.

(b) Within 90 days after the effective date of this Act, each lender shall subscribe to a subprime credit reporting service, designated by the Commissioner, which has the capability of verifying the number and loan amounts of outstanding deferred deposit transactions entered into by any borrower with any lender licensed under this Act. Within 30 days of the effective date of this Act, the Commissioner shall issue a "Request for Proposal" from subprime credit reporting services capable of verifying the information described in this subsection and within 45 days of the effective date of this Act, the Commissioner shall designate that service which is capable of providing such verification and charges the lowest cost per query.

(c) Each lender shall report to the subprime credit reporting service the information necessary for the subprime credit reporting service to verify the number and loan amounts of outstanding deferred deposit transactions entered into by borrowers with lenders licensed under this Article.

(d) A lender must pay the proceeds from a deferred deposit transaction to the borrower in the form of a check from the lender. Upon the borrower's request, the lender may cash the lender's check if the lender has cash available to do so. The borrower shall not be charged an additional finance charge or fee for cashing the lender's check.

(e) No lender shall enter into a deferred deposit transaction with a borrower who has elected a mandatory repayment plan as provided in G.S. 53-281.4 on two separate occasions within a calendar year unless the borrower obtains counseling from a credit counseling service approved by the Commissioner.

"**§ 53-281.4. Mandatory repayment plan.**

If the borrower elects and so informs the lender at any time prior to the maturity date of the deferred deposit transaction, the borrower may declare an inability to repay and the lender shall accept a mandatory repayment plan with the following terms:

(1) The borrower and the lender sign a repayment plan agreement providing for four equal installments due on each of the borrower's next four paydays, with at least 14 days between the installments.

(2) The borrower agrees not to enter into any additional deferred deposit transactions during the term of the repayment plan.

(3) Upon completion of the plan, the lender shall report the borrower's positive payment history to consumer credit reporting agencies.

(4) Upon completion of the plan, the borrower is prohibited from entering into any deferred deposit transactions with any lender for at least one pay period.

(5) The lender may collect a fifteen dollar ($15.00) processing charge for each repayment plan.

"**§ 53-281.5. Prohibited practices regarding deferred deposit transactions.**

In addition to the prohibited practices under G.S. 53-283, the following are prohibited regarding deferred deposit transactions:

(1) Taking or attempting to take any security other than the borrower's instrument.

(2) Taking or attempting to take more than a single check or other instrument from the borrower in connection with a single transaction.

(3) Selling, offering, or soliciting any application for credit insurance in connection with a transaction.

(4) Tying the transaction to any other transaction, offer, or obligation of the borrower.

(5) Failing to comply with the Commissioner's request for assistance in resolving a complaint.

(6) Using or threatening to use criminal process to collect a dishonored check, unless fraud is involved.

(7) Assigning or selling to another lender an instrument taken in connection with a deferred deposit transaction unless the instrument bears the following endorsement: **THIS INSTRUMENT WAS GIVEN BY ITS MAKER TO SECURE A DEFERRED DEPOSIT TRANSACTION UNDER G.S. 53-281.1 AND THE ASSIGNEE IS DEEMED TO HAVE KNOWLEDGE OF AND SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THE LOAN AGREEMENT BETWEEN THE BORROWER AND THE ORIGINAL LENDER.**

(8) Failing to report accurately and promptly a borrower's positive repayment activity under G.S. 53-281.4 to credit reporting agencies.

(9) Failing to collect and provide information regarding the number, total, and average transaction amounts and any other information the Commissioner may request."

SECTION 4. G. S. 53-286 reads as rewritten:

"The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties may also be imposed upon persons acting on behalf of a licensee or any other person who violates this Article. Civil penalties shall not exceed ~~one thousand dollars ($1,000)~~ ten thousand dollars ($10,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers. The imposition or pendency of any order or penalty by the Commissioner shall not limit the right of any customer to pursue any available civil remedies."

SECTION 5. This act is effective when it becomes law.

HOUSE BILL 1213:
Regulate Deferred Deposit.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Reps. Culpepper and Grady
Date:	June 10, 2003	**Summary by:**	Karen Cochrane Brown
Version:	Third Edition		Committee Co-Counsel

SUMMARY: ***House Bill 1213 reauthorizes regulation of deferred deposit transactions. Deferred or delayed deposit transactions were previously authorized under provisions of the Check Casher Act. Those provisions expired on August 31, 2001. This bill would reauthorize these transactions and also provide additional consumer disclosures and protections that were not in the expired law.***

CURRENT LAW: Article 22 of Chapter 53 of the General Statutes requires that certain persons who cash checks for a fee must be licensed as a check cashing business. Prior to August 31, 2001, G.S. 53-281 allowed licensed check cashing businesses to advance cash in amounts up to $300.00, for postdated or delayed deposit checks. The fee for this service was 15% of the face amount of the check. The deposit could be delayed for up to 31 days. G.S. 53-281 expired on August 31, 2001, and since that time North Carolina law has not permitted these so-called "payday loans". However, several businesses have continued to operate by entering into agency agreements with national banks to fund the loans. North Carolina is preempted by federal law from regulating national banks.

BILL ANALYSIS:

Section 1. – Adds several new definitions to the Check Casher Act to clarify provisions relating to the renewed authorization for deferred deposit transactions. One important addition is the term "lender" which includes any person or entity that offers or makes a deferred deposit loan or acts as an agent for a third party that makes such loans even if the third party is exempt from the licensing requirements or whether approval, acceptance or ratification by a third party is required. However, a state or federally chartered depository institution is not considered a lender if:

- It initially advances the loan to the borrower;
- It does not sell or transfer a preponderant economic interest in the transaction to an agent, affiliate, or subsidiary, unless selling, assigning or transferring a preponderant economic interest is permitted by the primary regulator of the depository institution; and
- It developed the deferred deposit transaction program on its own.

If a lender acts as agent for a depository institution in any way in making the deferred deposit transaction and the depository institution meets the three requirements for exemption, the lender must comply with all provision of this Article unless preempted by other law.

Section 2. – Adds a licensing requirement for businesses engaging in making deferred deposit transactions. The Commissioner of Banks is charged with issuing licenses and administering the Article.

Section 3. – Adds several new sections to Article 22, which reauthorize and regulate deferred deposit transactions. These transactions are permitted subject to the following requirements:

- Principal amount of the loan may not exceed $300.00;
- Lender may not charge a fee in excess of 15% of the loan amount or $40.00;
- Loan may not be repaid by the proceeds of another deferred deposit loan;
- Loan must be documented by a written agreement signed by the borrower and the lender;
- The amount of the fees charged must be expressed both as a dollar amount and as an effective annual percentage rate (APR).
- The maturity date may not be less than fourteen days nor more than sixty days from the transaction date;
- A notice advising the borrower of the right to cancel the transaction must be included in 10-point type;
- The agreement must be accompanied by a Regulation 'Z' disclosure, as provided by the federal Truth in Lending Act.
- The agreement may not contain a hold harmless clause, a confession of judgment clause, a mandatory arbitration clause that does not comply with standards of the American Arbitration Association, a provision in which the borrower agrees not to assert a claim or defense, or a provision in which the borrower waives any provision of the Article;
- Lenders must also verbally inform borrowers of their right to cancel the transaction, the specific terms of the transaction, and the right to elect a mandatory repayment plan, and how to exercise the right.
- Lenders may not enter into transactions with borrowers who have outstanding loans in excess of $300.00;
- Borrower must certify he has no outstanding loans and the lender must verify by use of a subprime credit reporting service.
- The Commissioner must solicit proposals and select a credit reporting service capable of providing the service and all lenders must subscribe to it.
- Lender may not enter transaction with a borrower who has elected a mandatory repayment plan twice in a calendar year unless the borrower obtains credit counseling.
- Borrowers who cannot repay may elect to enter into a mandatory repayment plan providing for four equal installments due on the borrower's next four paydays, with at least 14 days between installments. The lender may collect a $15.00 processing charge for each repayment plan;
- Prohibited practices related to deferred deposit transactions include: taking security other than the borrower's check, taking more than one check in connection with a single transaction, selling or offering credit insurance, tying the transaction to any other transaction, using or threatening to use criminal process, unless fraud is involved, assigning or selling the check unless the required endorsement is attached, failing to report positive repayment activity to credit reporting agencies, failing to assist or provide information to the Commissioner of Banks.

Section 4. – Increases the maximum amount of civil penalties that may be imposed for violation of the Act from $1,000.00 to $10,000.00 per violation.

The act would become effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1213

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H1213-ARU-37 [v.2]

Date 6/10 ,2003

Comm. Sub. [YES]
Amends Title [NO]
H1213-CSRO-25

Senator Hoyle

moves to amend the bill on page 1, line 25, through page 2, line 30,
by rewriting the lines to read:

"(4b) 'Lender' means any person or entity that offers or makes a deferred deposit transaction, arranges a deferred deposit transaction for a third party, or acts as an agent for a third party, regardless of whether the third party is exempt from licensing under this Article or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party. Notwithstanding that a bank, savings institution, credit union, or farm credit system may be exempted by federal law from this Article's provisions related to interest rate, finance charges, and licensure, all other applicable provisions of this Article apply to both a deferred deposit transaction and a deferred deposit lender."; and

on page 5, lines 3 through 21, by rewriting the lines to read:

"b. A query of the database created pursuant to G.S. 53-281.6.

(b) A lender must pay the proceeds from a deferred deposit transaction to the borrower in the form of a check from the lender. Upon the borrower's request, the lender may cash the lender's check if the lender has cash available to do so. The borrower shall not be charged an additional finance charge or fee for cashing the lender's check.

(c) No lender shall enter into a deferred deposit transaction with a borrower who"; and

on page 6, line 37,
by rewriting the line to read:

"**SECTION 5.** Article 22 of Chapter 53 of the General Statues is amended by adding the following new section to read:

"**§ 53-281.6. Database for reporting of deferred deposit loans.**

(a) On or before October 1, 2003, the Commissioner shall designate a third-party provider to develop, implement and maintain a private database, with real-time access through an Internet connection, in accordance with the provisions of this section. The database must be accessible to the Commissioner and the lender to verify the aggregate amount and total number of deferred deposit loan transactions outstanding for a particular borrower. The Commissioner shall insure that the third-party provider operates the database in accordance with the provision of this section.

The database must be able to do all of the following:

(1) Validate a borrower's social security number and must report to the lender if any such social security number is invalid, has been issued within the past five years prior to the date of submission, or represents a deceased person. The database provider must maintain access to the database 24 hours a day, seven (7) days a week.

(2) Validate whether a new deferred deposit loan may be extended to the borrower based on the allowable number of loans and aggregate loan amount pursuant to this Article.

(3) Provide additional information to the lender, at the option and sole expense of the lender, that can be used to render a more informed risk assessment decision based on other information that may be available on the borrower that would be an indication of the borrower's ability to pay. This should include all of the following:

a. Past performance data on deferred deposit loans the borrower has secured within or without of the State.

b. Inquiry information from lenders outside the State that would indicate loans outside the State that may have been secured by the borrower.

c. Access to other performance information about the borrower in relation to other sub-prime industries.

d. Information necessary to ensure lender compliance with federal OFAC requirements.

In any event, the Commissioner shall maintain investigative and enforcement responsibility for violations of this section and shall not delegate this responsibility to any third-party provider.

(b) The designated third-party provider may impose a verification fee not to exceed one dollar ($1.00) per transaction for access to data required to validate whether a deferred deposit loan may be extended to the customer based on the allowable number of loans and aggregate loan amount pursuant to this Article.

(c) The lender may impose a verification fee not to exceed one dollar ($1.00) per transaction, or the actual amount charged to the lender, whichever is less, for data required to be submitted by a lender.

Lenders may rely on the information contained in the database as accurate and are not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database.

(d) In no event shall the total of outstanding checks have an aggregate principal amount from any one borrower exceeding three hundred dollars ($300.00). No single lender shall have at any given time, with any one borrower, a total of outstanding checks with an aggregate face value of more than three hundred forty dollars ($340.00), equaling the total amount loaned plus finance charge.

(e) A lender may not enter into any loan transaction with a person who has outstanding loan transactions, the principal amount of which in the aggregate exceed three hundred dollars ($300.00). The lender must verify the following information:

(1) The lender shall maintain an intra-company database and shall verify the total number of and aggregate dollar amount of all outstanding deferred deposit loan transactions between a particular person and that lender or an affiliate of the lender.

(2) Upon full implementation of the statewide common database, the lender shall access the database established pursuant to subsection (a) of this section and shall verify whether any other lenders have outstanding loan transactions with that person and whether the total dollar amount of all such outstanding loan transactions in the aggregate exceed three hundred dollars ($300.00). In addition, the lender, at its option, shall leverage any other additional data that may be available on the borrower, as outlined in subdivision (3) of

subsection (a) of this section, to render a more complete decision on the borrower's ability to repay the deferred deposit loan.

(f) Before entering into each deferred deposit loan, a lender shall submit the required borrower data in the format the Commissioner shall reasonably require, including the borrower's name, social security number, address, drivers license number, amount of the transaction, borrower check number, date of the transaction, maturity date of the transaction, and any other information reasonably required by the Commissioner.

(g) Prior to implementation of the database or during times when the database is unavailable to lenders due to technical problems, a lender may rely upon the written verification of the borrower in a statement provided in substantially the following form in at least ten-point type as follows:

INCLUDING THE LOAN TRANSACTION IN WHICH I AM ABOUT TO ENTER, I DO NOT HAVE OUTSTANDING DEFERRED DEPOSIT LOANS, WITH AN AGGREGATE OUTSTANDING BALANCE EXCEEDING $300.00, WITH THIS OR OTHER LICENSED DEFERRED DEPOSIT LENDERS.

(h) Any deferred deposit loan that has been fully paid and satisfied, as defined in subsection (h), shall be designated as a closed transaction in the database immediately, but in no event later than 11:59 p.m. on the day the loan was fully paid and satisfied. Failure to report the loan as paid in a timely manner will result in an automatic civil administrative penalty of $100 for each day that the lender fails to indicate in the database that the loan has been paid. A lender shall not be subject to civil administrative penalties in the event updates to the database are not possible due to circumstances beyond lender's control, including but not limited to, the database experiencing temporarily technical problems.

(i) A deferred deposit transaction shall be considered a closed transaction at the time that any of the following have been done with the check:

(1) Redeemed by the customer by payment to the lender of the face amount of the check in cash.

(2) Exchanged by the lender for a cashier's check or cash from the borrower's financial institution.

(3) Deposited by the lender and the lender has evidence that the check has cleared.

(4) Collected by the lender or its agent through any civil remedy available under State law.

(5) Collected by means of a repayment plan agreed upon by the borrower and the lender or as the result of credit counseling where the lender has been paid the amount agreed upon by lender under the plan.

(j) Notwithstanding the provisions of subsection (h) of this section, the designated third-party provider shall automatically close any outstanding customer transaction five (5) days following the loan maturity date unless a lender reports to the database provider prior to that time that any of the following apply:

(1) The transaction remains open, due to the borrower's failure to make payment.

(2) The transaction is pending, due to the borrower's check or an electronic re-deposit being in the process of clearing the banking system.

(3) The transaction remains open, due to the borrower's check being returned to the lender for insufficient funds, closed accounts or stop payment order.

If a lender timely reports the status of a transaction as open or pending, the transaction shall remain an open transaction until fully paid and satisfied, as defined in subsection (k) of this section and reported as such by the lender. If a lender ceases offering deferred deposit loans, all open transactions with the lender shall automatically close sixty (60) days following the date the lender ceases offering deferred deposit loans, unless the lender reports to the designated third-party provider prior to the expiration of the sixty-day (60) period (i) those borrower transactions that remain open; and (ii) the specific reason each transaction remains open; and further provides to the Commissioner a reasonably acceptable plan which outlines how the lender will continue to update the database following the ceasing of it deferred deposit operations. If at any time the Commissioner reasonably determines that a lender who has ceased its deferred deposit operations is not updating the database in accordance with its approved plan, the Commissioner shall immediately close all remaining transactions attributable to the lender.

(k) Inquiries to the database by lenders shall only state that a person is eligible or ineligible for a new deferred presentment transaction together with a description of the



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1213

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H1213-ARU-37 [v.2]

reason for the determination. Only information previously registered and recorded by the lender on the database shall be made available to the lender by the database or the Commissioner. Only the person seeking the deferred presentment transaction may make a direct inquiry to the designated third-party provider to request a more detailed explanation of a particular transaction that was the basis for the database's ineligibility determination. Any information regarding any person's transactional history is confidential pursuant to this section, shall not be subject to public inspection and is not a public record under Chapter 132 of the General Statutes.

(l) As used in this section, the following terms mean:

(1) Open transaction or open. – A deferred deposit transaction that has been registered and recorded in the database but not closed or pending.

(2) Pending transaction or pending. – An open transaction that is in the process of clearing the banking system.

(3) Closed transaction or closed. – A deferred deposit transaction that has been terminated as defined in subsection (i) of this section."

SECTION 6. This act is effective when it becomes law.".

SIGNED Hoyle
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1213

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

H1213-ARU-32 [v.6]

Date 6/10 ,2003

Comm. Sub. [YES]
Amends Title [NO]
Third Edition

Senator Hagan

moves to amend the bill on moves to amend the bill on page 5, lines 3 through 21, by rewriting the lines to read:

"b. A query of the database created pursuant to G.S. 53-281.6.

(b) A lender must pay the proceeds from a deferred deposit transaction to the borrower in the form of a check from the lender. Upon the borrower's request, the lender may cash the lender's check if the lender has cash available to do so. The borrower shall not be charged an additional finance charge or fee for cashing the lender's check.

(c) No lender shall enter into a deferred deposit transaction with a borrower who"; and

on page 6, line 37,
by rewriting the line to read:

"SECTION 5. Article 22 of Chapter 53 of the General Statues is amended by adding the following new sections to read:

"**§ 53-281.6. Database for reporting of deferred deposit loans.**

(a) On or before October 1, 2003, the Commissioner shall implement a common database with real-time access through an Internet connection for all lenders that offer deferred deposit loans, as provided in this section. The Commissioner may contract with a private vendor. The database shall be accessible to the Commissioner and lenders to verify whether any deferred deposit loans are outstanding for a particular customer. Lenders shall submit the required data before entering into each deferred deposit loan, before accepting an installment payment, and upon the repayment of each deferred deposit loan in a format and with the identifying information required by the Commissioner, including the drawer's name, address, drivers license number, amount of the loan, date of the loan, the date and amount of all installment payments made, the

date that the loan is paid off, and any additional information required by the Commissioner. All individual borrower information provided under this section shall be maintained by the Commissioner as confidential to be used only for the purposes specified in this Article, shall not be subject to public inspection, and shall not be a public record under Chapter 132 of the General Statutes. Inquiries to the database by lenders shall only reveal whether the borrower is eligible or ineligible for a deferred deposit loan together with a description of the reason for the determination. Only information previously registered and recorded by the lender on the database shall be made available to the lender. Only the borrower seeking the deferred deposit loan may make a direct inquiry to the Commissioner to request a more detailed explanation of a particular loan that was the basis for the database's ineligibility determination. The Commissioner may impose a fee not to exceed one dollar ($1.00) per loan to access the database. A lender may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying in good faith on information contained in the database. The Commissioner may adopt procedures to administer and enforce the provisions of this section and to assure that the database is used by lenders in accordance with this section.

(b) The Commissioner of Banks shall compile an annual report by April 1 of each year, beginning with April 1, 2005, containing data regarding all deferred deposit loans made in the preceding year by lender and on an aggregate basis. Annual reports shall be made available to interested parties and the general public. The report shall include all information reported by lenders pursuant to G.S. 53-281.7. Consistent with North Carolina law, the report shall include nonidentifying borrower data from the preceding year, which is available from the database, including:

(1) The total number and dollar amount of deferred deposit loans made in the calendar year ending as of December 31 of the previous year.

(2) The total number and dollar amount of deferred deposit loans outstanding as of December 31 of the previous year.

(3) The minimum, maximum, and average dollar amount of payment devices whose deposits were deferred in the calendar year ending December 31 of the previous year.

(4) The average annual percentage rate and the average number of days a deposit of a payment device is deferred during the calendar year ending as of December 31 of the previous year.

(5) The number of loans made in the amount of one hundred dollars ($100.00) or less, the number of loans made in the amount of one hundred one dollars ($101.00) to two hundred dollars ($200.00), the number of loans in the amount of two hundred one dollars ($201.00) to three hundred dollars ($300.00), and the percentage of total loans made in each of these ranges.

(6) The number of loans that, upon repayment or deposit of a borrower's deferred deposit payment device, ended in the first week of the loan and the number of loans repaid or ending with the deposit of a borrower's deferred deposit payment device for successive weeks up to 14 weeks with the corresponding APR range for each week.

(7) The total dollar amount of fees collected for deferred deposit payment devices cashed.

(8) The total number and dollar amount of returned deferred deposit payment devices and fees charged for those returned deferred deposit payment devices.

(9) The total number of loans and the total dollar amount of the net charge-offs or write-offs and recoveries of the lender.

(10) The number and percentage of borrowers that used one, two, three, and four deferred deposit loans.

"**§ 53-281.7. Annual reports by lenders.**

The Commissioner shall require licensees to submit an annual report to the Commissioner on or before the last day of February for the preceding year disclosing:

(1) The resources, assets, and liabilities of the licensees at the beginning and the end of the period.

(2) The income, expense, gain, loss, and a reconciliation of surplus or net worth with the balance sheets, and the ratios of the profits to the assets reported.

(3) The total dollar amount and number of returned checks, checks recovered, and checks charged off during the calendar year ending as of December 31 of the previous year.

(4) A statement verifying that the licensee has not used the criminal process or caused the criminal process to be used in the collection of any deferred deposit loan during the calendar year ending as of December 31 of the previous year.

(5) Any additional data or information which is reasonably available to the licensee and which the Commissioner deems necessary to the performance of the Commissioner's oversight duties."

SECTION 6. G.S. 53-277(a) reads as rewritten:

"(a) This Article shall not apply to:

(1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any ~~state; and~~ state, except that the following provisions shall apply to deferred deposit transactions under G.S. 53-281.1 entered into directly between such an entity and a North Carolina resident to the extent these provisions apply to licensees:

a. G.S. 53-275;
b. G.S. 53-281.1;
c. G.S. 53-281.2;
d. G.S. 53-281.3;
e. G.S. 53-281.4;
f. G.S. 53-281.5;
g. G.S. 53-281.6;
h. G.S. 53-281.7;
i. G.S. 53-286.

(2) Any person or entity principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of a retail sale or service and not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a fee or other consideration, where not more than two dollars ($2.00) is charged for the service."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1213

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1213-ARU-32 [v.6]

SECTION 7. This act is effective when it becomes law.".

SIGNED Hagan
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1213

Committee Substitute Favorable 4/29/03

Third Edition Engrossed 5/1/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H1213-CSRU-52 [v.1]

6/17/2003 10:45:54 AM

Short Title: Regulate Deferred Deposit. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO REGULATE DEFERRED DEPOSIT TRANSACTIONS AND TO PROVIDE ADDITIONAL CONSUMER DISCLOSURES AND PROTECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-275 reads as rewritten:

"**§ 53-275. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the term:

(1) "Cashing" means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

(2) "Check-cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration.

(3) "Commission" means the State Banking Commission.

(4) "Commissioner" means the Commissioner of Banks.

(4a) "Deferred deposit transaction" means a check-cashing or similar loan transaction in which a person pays a cash advance to a consumer in return for a check dated on the date it was written and agrees to hold the check for a period of days prior to deposit or presentment, or accepts a postdated check and agrees to hold the check for deposit or presentment at least until the date written on the check. The term shall also include any such arrangement in which a person pays a cash advance in return for an authorization from a consumer for a draft or electronic debit rather than a check.

(4b) 'Lender' means any person or entity that offers or makes a deferred deposit transaction, arranges a deferred deposit transaction for a third

party, or acts as an agent for a third party, regardless of whether the third party is exempt from licensing under this Article or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party. Notwithstanding that a bank, savings institution, credit union, or farm credit system may be exempted by federal law from this Article's provisions related to interest rate, finance charges, and licensure, all other applicable provisions of this Article apply these entities. Any lender that is not a bank, savings institution, credit union, or farm credit system must comply with all the provisions of this Article, whether acting on its own account or as an agent or broker of the third party, to the extent federal law does not preempt the application of this Article to agents or brokers

(5) "Licensee" means a person or entity licensed to engage in a check-cashing business under this Article.

(5a) "Loan amount" means the amount financed as defined in Regulation 'Z' of the federal Truth-in-Lending Act (12 C.F.R. § 226.18(b).

(6) "Person" means an individual, partnership, association, or corporation."

SECTION 2. G.S. 53-276 reads as rewritten:

"**§ 53-276. License required.**

No person or other entity may engage in the business of cashing checks, drafts, or money orders for ~~consideration~~consideration, nor engage in the business of making, offering, or arranging deferred deposit transactions, or acting as an agent for a third party that makes deferred deposit transactions, without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a check or other currency equivalent instead of currency when cashing payment instruments."

SECTION 3. Article 22 of Chapter 53 of the General Statutes is amended by adding the following new sections to read:

"**§ 53-281.1. Deferred deposit transactions permitted.**

Lenders may make deferred deposit transactions pursuant to the following requirements:

(1) The face amount of the deferred deposit check may include a fee but the principal loan amount shall not exceed three hundred dollars ($300.00).

(2) Each deferred deposit check cashed by a lender shall be deemed to be a loan and shall be documented by a written agreement as provided in G.S. 53-281.2.

(3) A lender shall not directly or indirectly charge a fee or other consideration in excess of fifteen percent (15%) of the loan amount, provided the maximum fee charged to a borrower for entering into a deferred deposit transaction shall not exceed forty dollars ($40.00).

(4) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same lender or any affiliate of the lender. A lender shall not, for any consideration, renew or otherwise extend any deferred deposit check or withhold the check from deposit for any period beyond the time set forth in the written agreement, except as allowed under G.S. 53-281.4.

"**§ 53-281.2. Written agreement and disclosures required for deferred deposit transactions.**

(a) Each deferred deposit transaction shall be documented by a written agreement signed by the borrower and the lender. A legible copy of the agreement shall be provided to the borrower.

(b) The written agreement shall contain:

(1) The name and address of the borrower.

(2) The name, local street address, and telephone number of the lender.

(3) The transaction date, which shall be prominently labeled.

(4) The loan amount as defined in G.S. 53-275(5a).

(5) The amount of any fees charged, expressed as both a dollar amount and as an effective annual percentage rate (APR).

(6) The maturity date, which shall be no less than 14 days or more than 60 days after the transaction date.

(7) The following notices immediately above the borrower's signature line in at least ten-point type: **THIS TRANSACTION IS NOT MEANT TO MEET LONG-TERM FINANCIAL NEEDS AND SHOULD BE USED ONLY TO MEET SHORT-TERM CASH NEEDS. YOU HAVE THE RIGHT TO CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. ON THE NEXT BUSINESS DAY AFTER THE TRANSACTION DATE SHOWN ABOVE. TO CANCEL YOU MUST RETURN ALL OF THE CASH PROCEEDS TO THE LENDER. THE LENDER WILL REFUND TO YOU ALL FEES IF YOU CANCEL THIS TRANSACTION.**

(c) The written agreement shall be accompanied by a separate paper which contains all disclosures required by the federal Truth-in-Lending Act (12 U.S.C. § 1601, et seq.,) and the federal Reserve Board Regulation 'Z' and the consumer education information. The consumer education information shall be prepared by the Commissioner and shall inform the consumer of matters such as the complaint process through the Commissioner's office, the relative cost of short-term consumer loans, the availability of other forms of credit, the right of the customer to elect a repayment plan, and any other matters the Commissioner thinks are necessary or beneficial to consumers.

(d) The written agreement shall not contain any of the following provisions:

(1) A hold harmless clause.

(2) A confession of judgment clause.

(3) A mandatory arbitration clause that does not comply with the standards set forth in the statement of principles of the National

Consumer Dispute Advisory Committee of the American Arbitration Association in effect on the effective date of this Act.

(4) Any provision in which the borrower agrees not to assert a claim or defense arising out of the contract.

(5) Any waiver by the borrower of any provision of this Article.

(e) In addition to providing the written agreement, prior to entering a deferred deposit transaction, the lender shall verbally inform the borrower of the following:

(1) The borrower has the right to cancel the transaction and how the borrower can exercise this right.

(2) The terms of the transaction including the loan amount, the amount of any fees charged, expressed both as a dollar amount and as an annual percentage rate.

(3) The right of the borrower to elect a mandatory repayment plan and how the borrower can exercise this right.

"**§ 53-281.3. Deferred deposit transactions limited.**

(a) A lender shall not knowingly enter into a deferred deposit transaction with a borrower whom the lender knows has other transactions in the aggregate exceeding the principal amount of three hundred dollars ($300.00) or knows would exceed three transactions regardless of value. It shall be mandatory for the lender to meet both of the following conditions:

(1) The borrower signs a certification in substantially the following form: **I UNDERSTAND THAT NORTH CAROLINA LAW PROHIBITS A PERSON FROM HAVING MORE THAN $300.00 IN DEFERRED DEPOSIT CHECKS OUTSTANDING AT ONE TIME. I OWE THE FOLLOWING DEFERRED DEPOSIT AMOUNTS AND NO OTHERS:** (Write the amount you owe and the names of the licensees or write 'NONE'). This certification shall not constitute the basis of a criminal prosecution under G.S. 14-100.

(2) The lender shall verify the accuracy of this certification by:

a. A query of all of the lender's own records, and

b. A query of the database created pursuant to G.S. 53-281.6.

(b) A lender may pay the proceeds from a deferred deposit transaction to the borrower in the form of a check from the lender. Upon the borrower's request, the lender may cash the lender's check if the lender has cash available to do so. The borrower shall not be charged an additional finance charge or fee for cashing the lender's check.

(c) No lender shall enter into a deferred deposit transaction with a borrower who has elected a mandatory repayment plan as provided in G.S. 53-281.4 on two separate occasions within a calendar year unless the borrower obtains counseling from a credit counseling service approved by the Commissioner.

"**§ 53-281.4. Mandatory repayment plan.**

If the borrower elects and so informs the lender at any time prior to the maturity date of the deferred deposit transaction, the borrower may declare an inability to repay and the lender shall accept a mandatory repayment plan with the following terms:

(1) The borrower and the lender sign a repayment plan agreement providing for four equal installments due on each of the borrower's next four paydays, with at least 14 days between the installments.

(2) The borrower agrees not to enter into any additional deferred deposit transactions during the term of the repayment plan.

(3) Upon completion of the plan, the lender shall report the borrower's positive payment history to consumer credit reporting agencies.

(4) The lender may collect a fifteen-dollar ($15.00) processing charge for each repayment plan.

"**§ 53-281.5. Prohibited practices regarding deferred deposit transactions.**

In addition to the prohibited practices under G.S. 53-283, the following are prohibited regarding deferred deposit transactions:

(1) Taking or attempting to take any security other than the borrower's instrument.

(2) Taking or attempting to take more than a single check or other instrument from the borrower in connection with a single transaction.

(3) Selling, offering, or soliciting any application for credit insurance in connection with a transaction.

(4) Tying the transaction to any other transaction, offer, or obligation of the borrower.

(5) Failing to comply with the Commissioner's request for assistance in resolving a complaint.

(6) Using or threatening to use criminal process to collect a dishonored check, unless fraud is involved.

(7) Assigning or selling to another lender an instrument taken in connection with a deferred deposit transaction unless the instrument bears the following endorsement: **THIS INSTRUMENT WAS GIVEN BY ITS MAKER TO SECURE A DEFERRED DEPOSIT TRANSACTION UNDER G.S. 53-281.1 AND THE ASSIGNEE IS DEEMED TO HAVE KNOWLEDGE OF AND SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THE LOAN AGREEMENT BETWEEN THE BORROWER AND THE ORIGINAL LENDER.**

(8) Engaging in any device or subterfuge to evade the requirements of this Article including making loans disguised as personal property sales and leaseback transactions or disguising loan proceeds as cash "rebates" for the pretextual installment sale of goods or services.

(9) Failing to collect and provide information regarding the number, total, and average transaction amounts and any other information the Commissioner may request.

(10) Offering, arranging, acting as an agent for, or assisting a lender in the making of a deferred deposit transaction unless the lender complies with the provisions of this Article.

"**§ 53-281.6. Database for reporting of deferred deposit loans.**

(a) On or before October 1, 2003, the Commissioner shall contract with a third-party provider to develop, implement and maintain a database, with real-time access through an Internet connection, in accordance with the provisions of this section. The database must be accessible to the Commissioner and the lender to ensure compliance with this Article and to provide such other information as the Commissioner deems necessary. The Commissioner shall select a database provider based on an assessment of cost of service and an ability to perform the reporting requirements of this Article and pursuant to G.S. 143-129.7. The Commissioner shall also give consideration to the database provider's ability to provide additional credit information relevant to the borrower's ability to pay. The Commissioner may adopt procedures to administer and enforce the provisions of this section and to ensure that the database is used by lenders in accordance with this section. The Commissioner shall require the database provider to maintain a real time copy of the required reporting information in the database that shall be available to the Commissioner at all times and shall be the property of the Commissioner.

The database must be able to do all of the following:

(1) Validate a borrower's social security number and must report to the lender if any such social security number is invalid, has been issued within the past five years prior to the date of submission, or represents a deceased person.

(2) Validate whether a new deferred deposit transaction may be extended to the borrower based on the allowable number of loans and aggregate loan amount pursuant to this Article.

(3) Provide access to the database 24 hours a day, seven days a week.

(4) Provide information necessary to ensure lender compliance with federal Office of Foreign Asset Control requirements

In the discretion of the Commissioner and at the option and sole expense of the lender, the database may also provide additional credit information. The Commissioner shall maintain investigative and enforcement responsibility for violations of this section and shall not delegate this responsibility to any third-party provider.

(b) The database provider may impose and collect a verification fee, which shall be approved by the Commissioner, to be paid by the lender, to pay the costs required to validate whether a deferred deposit transaction may be extended to the borrower pursuant to this Article. Lenders may rely on the information contained in the database as accurate and are not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database.

(c) A lender may not enter into any loan transaction with a person who has outstanding loan transactions, the principal amount of which in the aggregate would exceed three hundred dollars ($300.00). The lender must verify the following information:

(1) The lender shall maintain an intra-company database and shall verify the total number of and aggregate dollar amount of all outstanding deferred deposit loan transactions between a particular person and that lender or an affiliate of the lender.

(2) Upon full implementation of the statewide common database, the lender shall access the database established pursuant to subsection (a) of this section and shall verify whether a loan may be made to the borrower based on the allowable number of loans and aggregate loan amounts pursuant to this Article.

(d) Before entering into each deferred deposit loan, a lender shall submit the required borrower data in the format the Commissioner shall reasonably require, including the borrower's name, social security number, address, drivers license number, amount of the transaction, borrower check number, date of the transaction, maturity date of the transaction, and any other information reasonably required by the Commissioner.

(e) Prior to implementation of the database or during times when the database is unavailable to lenders due to technical problems, a lender may rely upon the written verification of the borrower in a statement provided in substantially the following form in at least ten-point type as follows:

INCLUDING THE LOAN TRANSACTION IN WHICH I AM ABOUT TO ENTER, I DO NOT HAVE OUTSTANDING DEFERRED DEPOSIT LOANS, WITH AN AGGREGATE OUTSTANDING BALANCE EXCEEDING $300.00, WITH THIS OR OTHER LICENSED DEFERRED DEPOSIT LENDERS.

(f) Any deferred deposit loan that has been fully paid and satisfied, as defined in subsection (g), shall be designated as a closed transaction in the database immediately, but in no event later than 11:59 p.m. on the day the loan was fully paid and satisfied. Failure to report the loan as paid in a timely manner will result in an automatic civil administrative penalty of $100 for each day that the lender fails to indicate in the database that the loan has been paid. A lender shall not be subject to civil administrative penalties in the event updates to the database are not possible due to circumstances beyond lender's control, including but not limited to, the database temporarily experiencing technical problems.

(g) A deferred deposit transaction shall be considered a closed transaction at the time that any of the following have been done with the check:

(1) Redeemed by the customer by payment to the lender of the face amount of the check in cash.

(2) Exchanged by the lender for a cashier's check or cash from the borrower's financial institution.

(3) Deposited by the lender and the lender has evidence that the check has cleared.

(4) Collected by the lender or its agent through any civil remedy available under State law.

(5) Collected by means of a repayment plan agreed upon by the borrower and the lender or as the result of credit counseling where the lender has been paid the amount agreed upon by lender under the plan.

(h) Notwithstanding the provisions of subsection (f) of this section, the designated third-party provider shall automatically close any outstanding customer transaction five (5) days following the loan maturity date unless a lender reports to the database provider prior to that time that any of the following apply:

(1) The transaction remains open, due to the borrower's failure to make payment.

(2) The transaction is pending, due to the borrower's check or an electronic re-deposit being in the process of clearing the banking system.

(3) The transaction remains open, due to the borrower's check being returned to the lender for insufficient funds, closed accounts or stop payment order.

If a lender timely reports the status of a transaction as open or pending, the transaction shall remain an open transaction until fully paid and satisfied, as defined in subsection (g) of this section and reported as such by the lender. If a lender ceases offering deferred deposit loans, all open transactions with the lender shall automatically close sixty (60) days following the date the lender ceases offering deferred deposit loans, unless the lender reports to the designated third-party provider prior to the expiration of the sixty-day (60) period (i) those borrower transactions that remain open; and (ii) the specific reason each transaction remains open; and further provides to the Commissioner a reasonably acceptable plan which outlines how the lender will continue to update the database following the ceasing of it deferred deposit operations. If at any time the Commissioner reasonably determines that a lender who has ceased its deferred deposit operations is not updating the database in accordance with its approved plan, the Commissioner shall immediately close all remaining transactions attributable to the lender.

(i) Inquiries to the database by lenders shall only state that a person is eligible or ineligible for a new deferred presentment transaction together with a description of the reason for the determination. Only information previously registered and recorded by the lender on the database shall be made available to the lender by the database or the Commissioner. Only the person seeking the deferred presentment transaction may make a direct inquiry to the designated third-party provider to request a more detailed explanation of a particular transaction that was the basis for the database's ineligibility determination. Any information regarding any person's transactional history is confidential pursuant to this section, shall not be subject to public inspection and is not a public record under Chapter 132 of the General Statutes.

(j) As used in this section, the following terms mean:

(1) Open transaction or open. – A deferred deposit transaction that has been registered and recorded in the database but not closed or pending.

(2) Pending transaction or pending. – An open transaction that is in the process of clearing the banking system.

(3) Closed transaction or closed. – A deferred deposit transaction that has been terminated as defined in subsection (g) of this section.

"§ 53-281.7. Annual reports.

(a) The Commissioner shall require licensees to submit an annual report to the Commissioner on or before the last day of February for the preceding year disclosing:

(1) The resources, assets and liabilities of the licensees at the beginning and end of the period.

(2) The income, expense, gain, loss, and a reconciliation of surplus or net worth with the balance sheets, and the ratios of the profits to the assets reported.

(3) The total dollar amount and number of returned checks, checks recovered, and checks charged off during the calendar year ending as of December 31 of the previous year.

(4) A statement verifying that the licensee has not used the criminal process or caused the criminal process to be used in the collection of any deferred deposit loan during the calendar year ending as of December 31 of the previous year.

(5) Any additional data or information that is reasonably necessary to the performance of the Commissioner's oversight duties.

The Commissioner shall maintain as confidential any proprietary financial information submitted by lenders pursuant to this section.

(b) The Commissioner shall compile an annual report by April 1 of each year, beginning April 1, 2005, containing, at a minimum, data regarding all deferred deposit loans made in the preceding year by lender and on an aggregate basis. Annual reports shall be made available to interested parties and the general public. The report shall include in the aggregate all information reported by lenders pursuant to subsection (a) of this section. Consistent with North Carolina law, the report shall include, at a minimum, nonidentifying borrower data from the preceding year, which is available from the database, including:

(1) The total number and dollar amount of deferred deposit loans made in the calendar year ending as of December 31 of the previous year.

(2) The total number and dollar amount of deferred deposit loans outstanding as of December 31 of the previous year.

(3) The minimum, maximum, and average dollar amount of payment devices whose deposits were deferred in the calendar year ending December 31 of the previous year.

(4) The average annual percentage rate and the average number of days a deposit of a payment device is deferred during the calendar year ending as of December 31 of the previous year.

(5) The number of loans made in the amount of one hundred dollars ($100.00) or less, the number of loans made in the amount of one hundred one dollars ($101.00) to two hundred dollars ($200.00), the number of loans in the amount of two hundred one dollars ($201.00) to three hundred dollars ($300.00), and the percentage of total loans made in each of these ranges.

(6) The number of loans that, upon repayment or deposit of a borrower's deferred deposit payment device, ended in the first week of the loan and the number of loans repaid or ending with the deposit of a borrower's deferred deposit payment device for successive weeks up to 14 weeks with the corresponding APR range for each week.

(7) The total dollar amount of fees collected for deferred deposit payment devices cashed.

(8) The total number and dollar amount of returned deferred deposit payment devices and fees charged for those returned deferred deposit payment devices.

(9) The total number of loans and the total dollar amount of the net charge-offs or write-offs and recoveries of the lender.

(10) The number of deferred deposit loans entered into by borrowers in numerical order from one to the highest number of loans entered into by any borrower in the calendar year, with the corresponding percentages for each numerical category."

SECTION 4. G. S. 53-286 reads as rewritten:

"(a) The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties may also be imposed upon persons acting on behalf of a licensee or any other person who violates this Article. Civil penalties shall not exceed ~~one thousand dollars ($1,000)~~ ten thousand dollars ($10,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers. The imposition or pendency of any order or penalty by the Commissioner shall not limit the right of any customer to pursue any available civil remedies.

(b) Any deferred deposit loan agreement, and the accompanying payment device, the making or collecting of which violates any provision of this Article or rule adopted thereunder shall be void, and the lender or any other party acting by or through the lender shall have no right to collect, receive, or retain any principal or charges whatsoever with respect to the loan. In a successful action to enforce this provision, borrowers shall be entitled to recover their costs, including reasonable attorney's fees."

SECTION 5. G.S. 53-277(a)(1) reads as rewritten:

"**§ 53-277. Exemptions.**

(a) This Article shall not apply to:

(1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any ~~state;~~state, except that those provisions applicable to deferred deposit transactions, as defined in G.S. 53-275(4a), shall apply to lenders, as set forth in G.S. 53-275(4b); and

..."

SECTION 6. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1213

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

H1213-ARU-34 [v.2]

Date 6-17 ,2003

Comm. Sub. [YES]
Amends Title [NO]
Third Edition

Senator HAGAN

moves to amend the bill on page ~~5~~ 4, line ~~26~~ 41,
by rewriting the line to read:
"(a) If the borrower elects and so informs the lender at any time prior to the maturity date"; and

on page 5, lines ~~40~~ 9 and ~~41~~ 10,
by inserting the following between the lines:
"(b) The deferred deposit transaction shall have the following terms if the borrower has had any deferred deposit transactions outstanding during the previous fifteen (15) days:

(1) The borrower and the lender sign a repayment plan agreement providing for four equal installments due on each of the borrower's next four paydays, with at least 14 days between the installments; provided that for borrowers paid monthly, the repayment plan agreement shall provide for two equal installments due each of the borrower's next two paydays.

(2) The borrower, in the borrower's sole discretion, may prepay the

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1213

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1213-ARU-34 [v.2]

obligation in whole or in part without additional charge or fee prior to the end of the term.

(3) The lender shall ensure compliance with this section by a query of the lender's intra-company database and the statewide common database established pursuant to G.S. 53-281.6.".

SIGNED Kay L. Hay
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SUBSTITUTED BY AMENDMENT #4

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1213 DATE 6/17/03

S. B. No. _____ Amendment No. 4
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE H1213-CSRH-52[V.L]

Rep.)
Sen.) Berger

BY SUBSTITUTING FOR AMENDMENT # 3

1 moves to amend the bill on page 5, lines 2+3
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the word "four" and
4 substituting the word "six"
5
6
7
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9
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11
12
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19

SIGNED _____

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1213

AMENDMENT NO. 5
(to be filled in by
Principal Clerk)

H1213-ARO-34 [v.1]

Date 6/17 ,2003

Comm. Sub. [YES]
Amends Title [NO]
Third Edition

Senator Sloan

moves to amend the bill on page 2, line 43, by deleting the word "($40.00)." and substituting the words "($40.00), provided that the fee for any loan for a borrower that has had another deferred deposit transaction outstanding with the lender or its affiliate during the previous fifteen days shall not exceed fifteen dollars ($15.00).".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED X TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1213

Committee Substitute Favorable 4/29/03

Third Edition Engrossed 5/1/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H1213-PCS45163-RU-52

Short Title: Regulate Deferred Deposit. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO REGULATE DEFERRED DEPOSIT TRANSACTIONS AND TO PROVIDE ADDITIONAL CONSUMER DISCLOSURES AND PROTECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-275 reads as rewritten:

"**§ 53-275. Definitions.**

As used in this Article, unless the context clearly requires otherwise, the term:

(1) "Cashing" means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

(2) "Check-cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration.

(3) "Commission" means the State Banking Commission.

(4) "Commissioner" means the Commissioner of Banks.

(4a) "Deferred deposit transaction" means a check-cashing or similar loan transaction in which a person pays a cash advance to a consumer in return for a check dated on the date it was written and agrees to hold the check for a period of days prior to deposit or presentment, or accepts a postdated check and agrees to hold the check for deposit or presentment at least until the date written on the check. The term shall also include any such arrangement in which a person pays a cash advance in return for an authorization from a consumer for a draft or electronic debit rather than a check.

(4b) "Lender" means any person or entity that offers or makes a deferred deposit transaction, arranges a deferred deposit transaction for a third

party, or acts as an agent for a third party, regardless of whether the third party is exempt from licensing under this Article or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party. Notwithstanding that a bank, savings institution, credit union, or farm credit system may be exempted by federal law from this Article's provisions related to interest rate, finance charges, and licensure, all other applicable provisions of this Article apply to these entities. Any lender that is not a bank, savings institution, credit union, or farm credit system must comply with all the provisions of this Article, whether acting on its own account or as an agent or broker of the third party, to the extent federal law does not preempt the application of this Article to agents or brokers.

(5) "Licensee" means a person or entity licensed to engage in a check-cashing business under this Article.

(5a) "Loan amount" means the amount financed as defined in Regulation "Z" of the federal Truth-in-Lending Act (12 C.F.R. § 226.18(b)).

(6) "Person" means an individual, partnership, association, or corporation."

SECTION 2. G.S. 53-276 reads as rewritten:

"**§ 53-276. License required.**

No person or other entity may engage in the business of cashing checks, drafts, or money orders for ~~consideration~~consideration, nor engage in the business of making, offering, or arranging deferred deposit transactions, or acting as an agent for a third party that makes deferred deposit transactions, without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a check or other currency equivalent instead of currency when cashing payment instruments."

SECTION 3. Article 22 of Chapter 53 of the General Statutes is amended by adding the following new sections to read:

"**§ 53-281.1. Deferred deposit transactions permitted.**

Lenders may make deferred deposit transactions pursuant to the following requirements:

(1) The face amount of the deferred deposit check may include a fee but the principal loan amount shall not exceed three hundred dollars ($300.00).

(2) Each deferred deposit check cashed by a lender shall be deemed to be a loan and shall be documented by a written agreement as provided in G.S. 53-281.2.

(3) A lender shall not directly or indirectly charge a fee or other consideration in excess of fifteen percent (15%) of the loan amount, provided the maximum fee charged to a borrower for entering into a deferred deposit transaction shall not exceed forty dollars ($40.00).

(4) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same lender or any affiliate of the lender. A lender shall not, for any consideration, renew or otherwise extend any deferred deposit check or withhold the check from deposit for any period beyond the time set forth in the written agreement, except as allowed under G.S. 53-281.4.

"**§ 53-281.2. Written agreement and disclosures required for deferred deposit transactions.**

(a) Each deferred deposit transaction shall be documented by a written agreement signed by the borrower and the lender. A legible copy of the agreement shall be provided to the borrower.

(b) The written agreement shall contain:

(1) The name and address of the borrower.

(2) The name, local street address, and telephone number of the lender.

(3) The transaction date, which shall be prominently labeled.

(4) The loan amount as defined in G.S. 53-275(5a).

(5) The amount of any fees charged, expressed as both a dollar amount and as an effective annual percentage rate (APR).

(6) The maturity date, which shall be no fewer than 14 days nor more than 60 days after the transaction date.

(7) The following notices immediately above the borrower's signature line in at least ten-point type: **THIS TRANSACTION IS NOT MEANT TO MEET LONG-TERM FINANCIAL NEEDS AND SHOULD BE USED ONLY TO MEET SHORT-TERM CASH NEEDS. YOU HAVE THE RIGHT TO CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. ON THE NEXT BUSINESS DAY AFTER THE TRANSACTION DATE SHOWN ABOVE. TO CANCEL YOU MUST RETURN ALL OF THE CASH PROCEEDS TO THE LENDER. THE LENDER WILL REFUND TO YOU ALL FEES IF YOU CANCEL THIS TRANSACTION.**

(c) The written agreement shall be accompanied by a separate paper which contains all disclosures required by the federal Truth-in-Lending Act (12 U.S.C. § 1601, et seq.,) and the federal Reserve Board Regulation 'Z' and the consumer education information. The consumer education information shall be prepared by the Commissioner and shall inform the consumer of matters such as the complaint process through the Commissioner's office, the relative cost of short-term consumer loans, the availability of other forms of credit, the right of the customer to elect a repayment plan, and any other matters the Commissioner thinks are necessary or beneficial to consumers.

(d) The written agreement shall not contain any of the following provisions:

(1) A hold harmless clause.

(2) A confession of judgment clause.

(3) A mandatory arbitration clause that does not comply with the standards set forth in the statement of principles of the National

Consumer Dispute Advisory Committee of the American Arbitration Association in effect on the effective date of this act.

(4) Any provision in which the borrower agrees not to assert a claim or defense arising out of the contract.

(5) Any waiver by the borrower of any provision of this Article.

(e) In addition to providing the written agreement, prior to entering a deferred deposit transaction, the lender shall verbally inform the borrower of the following:

(1) The borrower has the right to cancel the transaction and how the borrower can exercise this right.

(2) The terms of the transaction including the loan amount, the amount of any fees charged, expressed both as a dollar amount and as an annual percentage rate.

(3) The right of the borrower to elect a mandatory repayment plan and how the borrower can exercise this right.

"**§ 53-281.3. Deferred deposit transactions limited.**

(a) A lender shall not knowingly enter into a deferred deposit transaction with a borrower whom the lender knows has other transactions in the aggregate exceeding the principal amount of three hundred dollars ($300.00) or the lender knows would exceed three transactions regardless of value. It shall be mandatory for the lender to meet both of the following conditions:

(1) The borrower signs a certification in substantially the following form: **I UNDERSTAND THAT NORTH CAROLINA LAW PROHIBITS A PERSON FROM HAVING MORE THAN $300.00 IN DEFERRED DEPOSIT CHECKS OUTSTANDING AT ONE TIME. I OWE THE FOLLOWING DEFERRED DEPOSIT AMOUNTS AND NO OTHERS:** (Write the amount you owe and the names of the licensees or write 'NONE'). This certification shall not constitute the basis of a criminal prosecution under G.S. 14-100.

(2) The lender shall verify the accuracy of this certification by:

a. A query of all of the lender's own records, and

b. A query of the database created pursuant to G.S. 53-281.6.

(b) A lender may pay the proceeds from a deferred deposit transaction to the borrower in the form of a check from the lender. Upon the borrower's request, the lender may cash the lender's check if the lender has cash available to do so. The borrower shall not be charged an additional finance charge or fee for cashing the lender's check.

(c) No lender shall enter into a deferred deposit transaction with a borrower who has elected a mandatory repayment plan as provided in G.S. 53-281.4 on two separate occasions within a calendar year unless the borrower obtains counseling from a credit counseling service approved by the Commissioner.

"**§ 53-281.4. Mandatory repayment plan.**

If the borrower elects and so informs the lender at any time prior to the maturity date of the deferred deposit transaction, the borrower may declare an inability to repay and the lender shall accept a mandatory repayment plan with the following terms:

(1) The borrower and the lender sign a repayment plan agreement providing for six equal installments due on each of the borrower's next six paydays, with at least 14 days between the installments.

(2) The borrower agrees not to enter into any additional deferred deposit transactions during the term of the repayment plan.

(3) Upon completion of the plan, the lender shall report the borrower's positive payment history to consumer credit reporting agencies.

(4) The lender may collect a fifteen-dollar ($15.00) processing charge for each repayment plan.

"**§ 53-281.5. Prohibited practices regarding deferred deposit transactions.**

In addition to the prohibited practices under G.S. 53-283, the following are prohibited regarding deferred deposit transactions:

(1) Taking or attempting to take any security other than the borrower's instrument.

(2) Taking or attempting to take more than a single check or other instrument from the borrower in connection with a single transaction.

(3) Selling, offering, or soliciting any application for credit insurance in connection with a transaction.

(4) Tying the transaction to any other transaction, offer, or obligation of the borrower.

(5) Failing to comply with the Commissioner's request for assistance in resolving a complaint.

(6) Using or threatening to use criminal process to collect a dishonored check, unless fraud is involved.

(7) Assigning or selling to another lender an instrument taken in connection with a deferred deposit transaction unless the instrument bears the following endorsement: **THIS INSTRUMENT WAS GIVEN BY ITS MAKER TO SECURE A DEFERRED DEPOSIT TRANSACTION UNDER G.S. 53-281.1 AND THE ASSIGNEE IS DEEMED TO HAVE KNOWLEDGE OF AND SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THE LOAN AGREEMENT BETWEEN THE BORROWER AND THE ORIGINAL LENDER.**

(8) Engaging in any device or subterfuge to evade the requirements of this Article including making loans disguised as personal property sales and leaseback transactions or disguising loan proceeds as cash "rebates" for the pretextual installment sale of goods or services.

(9) Failing to collect and provide information regarding the number, total, and average transaction amounts and any other information the Commissioner may request.

(10) Offering, arranging, acting as an agent for, or assisting a lender in the making of a deferred deposit transaction unless the lender complies with the provisions of this Article.

"**§ 53-281.6. Database for reporting of deferred deposit loans.**

(a) On or before October 1, 2003, the Commissioner shall contract with a third-party provider to develop, implement and maintain a database, with real-time access through an Internet connection, in accordance with the provisions of this section. The database must be accessible to the Commissioner and the lender to ensure compliance with this Article and to provide such other information as the Commissioner deems necessary. The Commissioner shall select a database provider based on an assessment of cost of service and an ability to perform the reporting requirements of this Article and pursuant to G.S. 143-129.7. The Commissioner shall also give consideration to the database provider's ability to provide additional credit information relevant to the borrower's ability to pay. The Commissioner may adopt procedures to administer and enforce the provisions of this section and to ensure that the database is used by lenders in accordance with this section. The Commissioner shall require the database provider to maintain a real time copy of the required reporting information in the database that shall be available to the Commissioner at all times and shall be the property of the Commissioner.

The database must be able to do all of the following:

(1) Validate a borrower's social security number and must report to the lender if any such social security number is invalid, has been issued within the past five years prior to the date of submission, or represents a deceased person.

(2) Validate whether a new deferred deposit transaction may be extended to the borrower based on the allowable number of loans and aggregate loan amount pursuant to this Article.

(3) Provide access to the database 24 hours a day, seven days a week.

(4) Provide information necessary to ensure lender compliance with the federal Office of Foreign Asset Control requirements.

In the discretion of the Commissioner and at the option and sole expense of the lender, the database may also provide additional credit information. The Commissioner shall maintain investigative and enforcement responsibility for violations of this section and shall not delegate this responsibility to any third-party provider.

(b) The database provider may impose and collect a verification fee, which shall be approved by the Commissioner, to be paid by the lender, to pay the costs required to validate whether a deferred deposit transaction may be extended to the borrower pursuant to this Article. Lenders may rely on the information contained in the database as accurate and are not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database.

(c) A lender may not enter into any loan transaction with a person who has outstanding loan transactions, the principal amount of which in the aggregate would exceed three hundred dollars ($300.00). The lender must verify the following information:

(1) The lender shall maintain an intracompany database and shall verify the total number of and aggregate dollar amount of all outstanding deferred deposit loan transactions between a particular person and that lender or an affiliate of the lender.

(2) Upon full implementation of the statewide common database, the lender shall access the database established pursuant to subsection (a) of this section and shall verify whether a loan may be made to the borrower based on the allowable number of loans and aggregate loan amounts pursuant to this Article.

(d) Before entering into each deferred deposit loan, a lender shall submit the required borrower data in the format the Commissioner shall reasonably require, including the borrower's name, social security number, address, drivers license number, amount of the transaction, borrower check number, date of the transaction, maturity date of the transaction, and any other information reasonably required by the Commissioner.

(e) Prior to implementation of the database or during times when the database is unavailable to lenders due to technical problems, a lender may rely upon the written verification of the borrower in a statement provided in substantially the following form in at least ten-point type as follows:

INCLUDING THE LOAN TRANSACTION IN WHICH I AM ABOUT TO ENTER, I DO NOT HAVE OUTSTANDING DEFERRED DEPOSIT LOANS, WITH AN AGGREGATE OUTSTANDING BALANCE EXCEEDING $300.00, WITH THIS OR OTHER LICENSED DEFERRED DEPOSIT LENDERS.

(f) Any deferred deposit loan that has been fully paid and satisfied, as defined in subsection (g) of this section, shall be designated as a closed transaction in the database immediately, but in no event later than 11:59 P.M. on the day the loan was fully paid and satisfied. Failure to report the loan as paid in a timely manner will result in an automatic civil administrative penalty of one hundred dollars ($100.00) for each day that the lender fails to indicate in the database that the loan has been paid. A lender shall not be subject to civil administrative penalties in the event updates to the database are not possible due to circumstances beyond the lender's control, including the database temporarily experiencing technical problems.

(g) A deferred deposit transaction shall be considered a closed transaction at the time that any of the following have been done with the check:

(1) Redeemed by the customer by payment to the lender of the face amount of the check in cash.

(2) Exchanged by the lender for a cashier's check or cash from the borrower's financial institution.

(3) Deposited by the lender and the lender has evidence that the check has cleared.

(4) Collected by the lender or its agent through any civil remedy available under State law.

(5) Collected by means of a repayment plan agreed upon by the borrower and the lender or as the result of credit counseling where the lender has been paid the amount agreed upon by the lender under the plan.

(h) Notwithstanding the provisions of subsection (f) of this section, the designated third-party provider shall automatically close any outstanding customer transaction five (5) days following the loan maturity date unless a lender reports to the database provider prior to that time that any of the following apply:

(1) The transaction remains open, due to the borrower's failure to make payment.

(2) The transaction is pending, due to the borrower's check or an electronic redeposit being in the process of clearing the banking system.

(3) The transaction remains open, due to the borrower's check being returned to the lender for insufficient funds, closed accounts, or stop payment order.

If a lender timely reports the status of a transaction as open or pending, the transaction shall remain an open transaction until fully paid and satisfied, as defined in subsection (g) of this section and reported as such by the lender. If a lender ceases offering deferred deposit loans, all open transactions with the lender shall automatically close 60 days following the date the lender ceases offering deferred deposit loans, unless the lender reports to the designated third-party provider prior to the expiration of the 60-day period (i) those borrower transactions that remain open; and (ii) the specific reason each transaction remains open; and further provides to the Commissioner a reasonably acceptable plan which outlines how the lender will continue to update the database following the ceasing of its deferred deposit operations. If at any time the Commissioner reasonably determines that a lender who has ceased its deferred deposit operations is not updating the database in accordance with its approved plan, the Commissioner shall immediately close all remaining transactions attributable to the lender.

(i) Inquiries to the database by lenders shall only state that a person is eligible or ineligible for a new deferred presentment transaction together with a description of the reason for the determination. Only information previously registered and recorded by the lender on the database shall be made available to the lender by the database or the Commissioner. Only the person seeking the deferred presentment transaction may make a direct inquiry to the designated third-party provider to request a more detailed explanation of a particular transaction that was the basis for the database's ineligibility determination. Any information regarding any person's transactional history is confidential pursuant to this section, shall not be subject to public inspection, and is not a public record under Chapter 132 of the General Statutes.

(j) As used in this section, the following terms mean:

(1) Open transaction or open. – A deferred deposit transaction that has been registered and recorded in the database but not closed or pending.

(2) Pending transaction or pending. – An open transaction that is in the process of clearing the banking system.

(3) Closed transaction or closed. – A deferred deposit transaction that has been terminated as defined in subsection (g) of this section.

"**§ 53-281.7. Annual reports.**

(a) The Commissioner shall require licensees to submit an annual report to the Commissioner on or before the last day of February for the preceding year disclosing:

(1) The resources, assets, and liabilities of the licensees at the beginning and end of the period.

(2) The income, expense, gain, loss, and a reconciliation of surplus or net worth with the balance sheets, and the ratios of the profits to the assets reported.

(3) The total dollar amount and number of returned checks, checks recovered, and checks charged off during the calendar year ending as of December 31 of the previous year.

(4) A statement verifying that the licensee has not used the criminal process or caused the criminal process to be used in the collection of any deferred deposit loan during the calendar year ending as of December 31 of the previous year.

(5) Any additional data or information that is reasonably necessary to the performance of the Commissioner's oversight duties.

The Commissioner shall maintain as confidential any proprietary financial information submitted by lenders pursuant to this section.

(b) The Commissioner shall compile an annual report by April 1 of each year, beginning April 1, 2005, containing, at a minimum, data regarding all deferred deposit loans made in the preceding year by the lender and on an aggregate basis. Annual reports shall be made available to interested parties and the general public. The report shall include in the aggregate all information reported by lenders pursuant to subsection (a) of this section. Consistent with North Carolina law, the report shall include, at a minimum, nonidentifying borrower data from the preceding year, which is available from the database, including:

(1) The total number and dollar amount of deferred deposit loans made in the calendar year ending as of December 31 of the previous year.

(2) The total number and dollar amount of deferred deposit loans outstanding as of December 31 of the previous year.

(3) The minimum, maximum, and average dollar amount of payment devices whose deposits were deferred in the calendar year ending December 31 of the previous year.

(4) The average annual percentage rate and the average number of days a deposit of a payment device is deferred during the calendar year ending as of December 31 of the previous year.

(5) The number of loans made in the amount of one hundred dollars ($100.00) or less, the number of loans made in the amount of one hundred one dollars ($101.00) to two hundred dollars ($200.00), the number of loans in the amount of two hundred one dollars ($201.00) to three hundred dollars ($300.00), and the percentage of total loans made in each of these ranges.

(6) The number of loans that, upon repayment or deposit of a borrower's deferred deposit payment device, ended in the first week of the loan and the number of loans repaid or ending with the deposit of a borrower's deferred deposit payment device for successive weeks up to 14 weeks with the corresponding APR range for each week.

(7) The total dollar amount of fees collected for deferred deposit payment devices cashed.

(8) The total number and dollar amount of returned deferred deposit payment devices and fees charged for those returned deferred deposit payment devices.

(9) The total number of loans and the total dollar amount of the net charge-offs or write-offs and recoveries of the lender.

(10) The number of deferred deposit loans entered into by borrowers in numerical order from one to the highest number of loans entered into by any borrower in the calendar year, with the corresponding percentages for each numerical category."

SECTION 4. G. S. 53-286 reads as rewritten:

"(a) The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties may also be imposed upon persons acting on behalf of a licensee or any other person who violates this Article. Civil penalties shall not exceed ~~one thousand dollars ($1,000)~~ ten thousand dollars ($10,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers. The imposition or pendency of any order or penalty by the Commissioner shall not limit the right of any customer to pursue any available civil remedies.

(b) Any deferred deposit loan agreement, and the accompanying payment device, the making or collecting of which violates any provision of this Article or rule adopted thereunder shall be void, and the lender or any other party acting by or through the lender shall have no right to collect, receive, or retain any principal or charges whatsoever with respect to the loan. In a successful action to enforce this provision, borrowers shall be entitled to recover their costs, including reasonable attorneys' fees."

SECTION 5. G.S. 53-277(a)(1) reads as rewritten:

"**§ 53-277. Exemptions.**

(a) This Article shall not apply to:

(1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any ~~state;~~state, except that those provisions applicable to deferred deposit transactions, as defined in G.S. 53-275(4a), shall apply to lenders, as set forth in G.S. 53-275(4b); and

...."

SECTION 6. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 17, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mary H. Odom	AARP
Richard C. Hatch	AARP
Mike Calhoun	Self-Help
Yolanda McGill	CRL
Lisa Engelkins	CCCS / self
SUSAN LUPTON	COALITION FOR RESPONSIBLE LENDING
REGINALD JOHNSON	COALITION FOR RESPONSIBLE LENDING
Jack Kimbrell	STHL
Marie A. McBride	STHL
Tanya Wolfram	Community Reinvestment Assoc. of NC
Helen Savage	AARP

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 17, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patrick Gilbert	Self-Help
Diane Ogee	AARP
Rob Jackson	AARP
	NCCA
	CFSA
Crissy Porter	Smith Anderson.
	CFSA
	CRL
	Center for Responsible Lending
	Poyner & Spruill
	Poyner & Spruill

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 17, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard W. Hatch	AARP, 121 SE 2nd St. Oak Island NC 28465
Steve Roberts	AARP
Gary Robertson	AP
David Spoller	State Farm
Lenny Pugnit	NCSBA
Larry Lawley	LBA
Joe + Kerri McClees	McClees Consulting, Inc.
Amy Darden	NC Bar Assn.
Tammy Reinheimer	Veritec Solutions LLC
Ashley Weber	Self-Help
Erin Nicol	" "

VISITOR REGISTRATION SHEET

Name of Committee Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Peter Skillern	CRA-NC
Amy Ellis	NCAFC
Ken Klee	NCMS
Wayne Yay	Leg. Counsel
Andrew Wise	AGO
Stan Wall	CCNC
Kenwood V. Long	NCMSL
John Peterson	NCINS
Karine Chapman	PPHS
Jerry Bizzell	NCCCA
Tony Rand	NCAHP
Jorge Rivera	JPDesoc
Kevin Leonard	NCSR
Carolyn Honeycutt	DWNC
Jeanette Clarke	Self-Help
Elizabeth Kovacich Collins	Self-Help
Jonathan Lanier	Self-Help
Keith Sutton	Triangle Urban League
[illegible]	PCTahoma 6685660
Keith Gabbett	CRL
Terry Sullivan	Wilmington
Barbara Gandler	MFSS
John Rustin	NCFPC

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
John O'Hale	Governor's Office
Cara Saver	Rep Glazier
Ken Divan	
Elizabeth Dalton	Bone & Assoc. / Resident Lenders
[illegible]	Bone & Assoc
Becky Mercer	Mercer & Assoc.
[illegible]	[illegible], AL, PA
[illegible]	WCSR
Julia Cummings	Intern
Abby Youngken	Intern
[illegible]	First Citizens Bk
Paul H. Stock	NC Bankers Assn.
Tamika Sprouill	Rep. Culpepper

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 17, 2003

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David West	Housing Rights Center of Wake County, Inc. 3948 Browning Place, Suite 210 Raleigh, NC 27609

SENATE COMMERCE COMMITTEE
Tuesday, July 15, 2003 at 4:15 p.m.
Senate Chamber, Legislative Building

MINUTES

The Senate Commerce Committee met at 4:15 p.m. on Tuesday, July 15, 2003, in the Senate Chamber of the Legislative Building. Fifteen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced Senator Tony Rand to explain HB 1066, Health Plans Disclose Fee Schedules/Coding. Senator Rand moved the adoption of a committee substitute. The motion carried. Senator Kay Hagan moved an unfavorable report of the bill, but favorable report of the committee substitute. The motion carried.

The meeting adjourned at 4:20 p.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

HEALTH PLANS DISCLOSE FEE SCHEDULES/CODING: House Bill 1066

BILL ANALYSIS

Committee: Senate Commerce
Date: June 4, 2003
Version: Proposed Committee Substitute H1066-CSRC-65[v.5]

Introduced by: Rep. C. Wilson
Summary by: Kory Goldsmith Committee Counsel

SUMMARY: ***House Bill 1066 requires insurers to provide to health care providers the insurer's schedule of fees associated with the insurer's top 30 services or procedures. Insurers would also be required to provide to provides and health care facilities a description of the insurer's claims submission and reimbursement policies. Insurers would also have to provide advance notice of changes in their fee schedules, and changes in their policies regarding claims submission and reimbursement.***

CURRENT LAW: G.S. 58-3-225(b) requires insurers to respond within 30 days of receipt of a claim by either paying the claim or otherwise notify the insured as to the status of the claim. It also specifies the information an insurer must provide to the insured when a claim is denied.

BILL ANALYSIS:

Section 1 - Creates a new section, G.S. 58-2-226. Health Plan fee schedules amends

Definitions:

"Claim submission policy" means the procedure adopted by an insured that providers and health care facilities use to submit claims for reimbursement for services rendered.

"Health care facility" or "facility" is a facility is a hospital or mental health facility as defined in Chapters 131E and 122C of the General Statutes.

"Health care provider" or "provider" means an individual who is licensed, certified, or otherwise authorized under Chapter 90 or 90B of the General Statutes or under the laws of another state to provide health care services in the ordinary course of business or practice of a profession or in an approved education or training program.

"Insurer" includes an insurance company subject to Chapter 58, a service corporation, a health maintenance organization, or a multiple employer welfare arrangement that writes a health benefit plan.

"Reimbursement policy" means information relating payment of providers and facilities, including policies on claims bundling, recognition and nonrecognition of CPT codes, definitions of global surgery periods, and payment based on the relationship of procedure code to diagnosis code.

Purpose: states that the purpose of the new section is to establish the minimum requirements for disclosure and notification to providers and facilities of insurers' schedules of fees, claim submission policies and reimbursement policies. The section does not prevent an insurer from prohibiting a provider or a facility from disclosing the information to third parties.

Disclosure of fees: Insurers must disclose to providers the insurer's fee schedule for the insurer's top 30 services and procedures most commonly billed by the class of provider. Upon request, the insurer would also have to provide a full fee schedule for services and procedures billed by that class of provider.

Disclosure of policies: An insurer must disclose to providers and facilities a description of the insurer's claims submission and reimbursement policies.

Availability of information: An insurer's contract must indicate the availability of the information that is required to be provided under this section.

Notification of claims: Insurers would be required to provide notice to providers and facilities prior to implementing changes to the schedules of fees, or policies related to claim submission and reimbursement. An insurer would have to provide the notice within the contractual period but no less than or 30 days from the implementation of the change. Advance notice would not be required if the changes have the effect of increasing fees, expanding benefit coverage, or are made for patient safety considerations. Notice of changes may be made in a medium chosen by the insurer.

Reference information: If an insurer uses source information that is developed independently, the insurer may satisfy the requirements of the act by providing clear instructions regarding how a provider or facility can access that information.

Contract negotiations: If an insurer is offering a contract to a provider, the insurer must also provide the insurer's schedule for the fees associated with the top 30 services and procedures most commonly bill by that class of provider and the full fee schedule upon request.

Submission of claims: Health care providers must submit claims according to standards required by federal law.

Exemptions:

The requirements (except providing fee schedules) would not apply until January 1, 2005 for an insurer on a claim adjudication system that was implemented prior to January 1, 1982 provided the insurer verifies with the Commissioner of Insurance that its claim adjudication system qualified under this subsection and the insurer is implementing a new claim adjudication software system that will be in place not later that December 31, 2004. This exception expires January 1, 2005.

The requirements (except notification of changes to fee schedules and reimbursement/claim submission policies) would not apply to the Teachers and State Employees' Major Medical Plan until January 1, 2006.

Section 2 requires that every health benefit plan must annually submit to the Commissioner of Insurance aggregate data on request for reimbursement policies from participating providers and the health benefit plan's responses to those requests.

Most of the act becomes effective March 1, 2004, but the requirement that insurers provide providers with fee schedules and descriptions of the claims submission policies become effective when the bill becomes law for contracts issued, modified or renewed after that date.

H1066-SMRC-002

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, July 15, 2003

SENATOR SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1066** Health Plans Disclose Fee Schedules/Coding.

Draft Number:	PCS 80345
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1066

Committee Substitute Favorable 5/1/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H1066-PCS80345-RC-65

Short Title: Health Plans Disclose Fee Schedules/Coding. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO FACILITATE THE SUBMISSION OF COMPLETE CLAIMS BY PROVIDERS UNDER HEALTH BENEFIT PLANS BY REQUIRING HEALTH BENEFIT PLANS TO DISCLOSE TO CONTRACT PROVIDERS THE PLANS' SCHEDULES OF FEES AND CLAIMS SUBMISSION AND REIMBURSEMENT POLICIES, AND TO PROVIDE NOTICE TO THE PROVIDER PRIOR TO IMPLEMENTING CHANGES TO THE SCHEDULES OR POLICIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-227. Health plans fee schedules.**

(a) Definitions. – As used in this section, the following terms mean:

(1) Claim submission policy. – The procedure adopted by an insurer and used by a provider or facility to submit to the insurer claims for services rendered and to seek reimbursement for those services.

(2) Health care facility or facility. – A facility that is licensed under Chapter 131E or Chapter 122C of the General Statutes or is owned or operated by the State of North Carolina in which health care services are provided to patients.

(3) Health care provider or provider. – An individual who is licensed, certified, or otherwise authorized under Chapter 90 or Chapter 90B of the General Statutes or under the laws of another state to provide health care services in the ordinary course of business or practice of a profession or in an approved education or training program.

(4) Insurer. – An entity that writes a health benefit plan and that is an insurance company subject to this Chapter, a service corporation under Article 65 of this Chapter, a health maintenance organization under

Article 67 of this Chapter, or a multiple employer welfare arrangement under Article 49 of this Chapter, except it does not include an entity that writes stand alone dental insurance.

(5) Reimbursement policy. – Information relating to payment of providers and facilities including policies on the following:

a. Claims bundling and other claims editing processes.

b. Recognition or nonrecognition of CPT code modifiers.

c. Downcoding of services or procedures.

d. The definition of global surgery periods.

e. Multiple surgical procedures.

f. Payment based on the relationship of procedure code to diagnosis code.

(6) Schedule of fees. – CPT, HCPCS, ICD-9-CM codes, ASA codes, modifiers, and other applicable codes for the procedures billed for that class of provider.

(b) Purpose. – The purpose of this section is to establish the minimum required provisions for the disclosure and notification of an insurer's schedule of fees, claims submission, and reimbursement policies to health care providers and health care facilities. Nothing in this section shall supercede (i) the schedule of fees, claim submission, and reimbursement policy terms in an insurer's contract with a provider or facility that exceed the minimum requirements of this section nor (ii) any contractual requirement for mutual written consent of changes to reimbursement policies, claims submission policies, or fees. Nothing in this section shall prevent an insurer from requiring that providers and facilities keep confidential, and not disclose to third parties, the information that an insurer must provide under this section.

(c) Disclosure of Fee Schedules. – An insurer shall make available to contracted providers the following information:

(1) The insurer's schedule of fees associated with the top 30 services or procedures most commonly billed by that class of provider, and, upon request, the full schedule of fees for services or procedures billed by that class of provider, in accordance with subdivision (3) of this subsection.

(2) In the case of a contract incorporating multiple classes of providers, the insurer's schedule of fees associated with the top 30 services or procedures most commonly billed for each class of provider, and, upon request, the full schedule of fees for services or procedures billed for each class of provider, in accordance with subdivision (3) of this subsection.

(3) If a provider requests fees for more than 30 services and procedures, the insurer may require the provider to specify the additional requested services and procedures and may limit the provider's access to the additional schedule of fees to those associated with services and procedures performed by or reasonably expected to be performed by the provider. The insurer may also limit the frequency of requests for

the additional codes by each provider, provided that such additional codes will be made available upon request at least annually and at any time there are changes for which notification is required pursuant to subsection (f) of this section.

(d) Disclosure of Policies. – An insurer shall make available to contracted providers and facilities a description of the insurer's claim submission and reimbursement policies.

(e) Availability of Information. – Insurers shall notify contracted providers and facilities in writing of the availability of information required or authorized to be provided under this section. An insurer may satisfy this requirement by indicating in the contract with the provider the availability of this information or by providing notice in a manner authorized under subsection (f) of this section for notification of changes.

(f) Notification of Changes. – Insurers shall provide advance notice to providers and facilities of changes to the information that insurers are required to provide under this section. The notice period for a change in the schedule of fees, reimbursement policies, or submission of claims policies shall be the contractual notice period, but in no event shall the notices be given less than 30 days prior to the change. An insurer is not required to provide advance notice of changes to the information required under this section if the change has the effect of increasing fees, expanding health benefit plan coverage, or is made for patient safety considerations, in which case, notification of the changes may be made concurrent with the implementation of the changes. Information and notice of changes may be provided in the medium selected by the insurer, including an electronic medium. However, the insurer must inform the affected contracted provider or facility of the notification method to be used by the insurer and, if the insurer uses an electronic medium to provide notice of changes required under this section, the insurer shall provide clear instructions regarding how the provider or facility may access the information contained in the notice.

(g) Reference Information. – If an insurer references source information that is the basis for a schedule of fees, reimbursement policy, or claim submission policy, and the source information is developed independently of the insurer, the insurer may satisfy the requirements of this section by providing clear instructions regarding how the provider or facility may readily access the source information or by providing for actual access if agreed to in the contract between the insurer and the provider.

(h) Contract Negotiations. – When an insurer offers a contract to a provider, the insurer shall also make available its schedule of fees associated with the top 30 services or procedures most commonly billed by that class of provider. Upon the request of a provider, the insurer shall also make available the full schedule of fees for services or procedures billed by that class of provider or for each class of provider in the case of a contract incorporating multiple classes of providers. If a provider requests fees for more than 30 services and procedures, the insurer may require the provider to specify the additional requested services and procedures and may limit the provider's access to the additional schedule of fees to those associated with services and procedures performed by or reasonably expected to be performed by the provider.

(i) Exemptions. – Except for the information required to be provided under subsection (c) of this section, this section does not apply to:

(1) Claims processed by an insurer on a claims adjudication system that was implemented prior to January 1, 1982, provided that the insurer (i) verifies with the Commissioner that its claims adjudication system qualified under this subsection, (ii) is implementing a new claims adjudication software system, and (iii) is proceeding in good faith to move all insured claims to the new system as soon as possible and in any event no later than December 31, 2004; or

(2) Information that the insurer verifies with the Commissioner is required to be provided by the terms of a national settlement agreement between the insurer and trade associations representing certain providers, provided that the agreement is approved prior to March 1, 2004, by the court having jurisdiction over the settlement. The exemption provided in this subdivision shall be limited to those terms of the agreement that are required to be implemented no later than December 31, 2004. Nothing in this subdivision shall be construed to relieve the insurer of complying with any terms and deadlines as set out in the agreement."

SECTION 2. On or before the applicable effective dates, each insurer shall provide to the Commissioner of Insurance a written description of the policies and procedures to be used by the insurer to comply with this act.

SECTION 3. Sections 2 and 3 of this act are effective when they become law. Subsection (c) of G.S. 58-3-227, as enacted by Section 1 of this act, becomes effective January 1, 2004, and applies to the earlier of the following: (i) a contract issued, renewed, or modified on or after January 1, 2004; or (ii) any fee schedule request made on or after July 1, 2004. The remainder of this act becomes effective March 1, 2004. Subsection (i) of G.S. 58-3-227 as enacted by Section 1 of this act, expires on January 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

HOUSE BILL 1066
Committee Substitute Favorable 5/1/03

Short Title: Health Plans Disclose Fee Schedules/Coding. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO FACILITATE THE SUBMISSION OF COMPLETE CLAIMS BY PROVIDERS UNDER HEALTH BENEFIT PLANS BY REQUIRING HEALTH BENEFIT PLANS TO DISCLOSE TO CONTRACT PROVIDERS THE PLANS' SCHEDULES OF FEES AND CLAIMS SUBMISSION AND REIMBURSEMENT POLICIES, AND TO PROVIDE NOTICE TO THE PROVIDER PRIOR TO IMPLEMENTING CHANGES TO THE SCHEDULES OR POLICIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-3-225 is amended by adding the following new subsection to read:

"(n) In order to facilitate submission of complete claims by providers:

(1) Insurers shall make available to contracted health care providers the information listed in subdivision (2) of this subsection and shall provide to contracted health care providers advance notice of changes to the information listed in subdivision (2) of this subsection. Notice of a change in reimbursement policy shall be given at least 30 days prior to implementing the change. The notice period for a change in a schedule of fees shall be the contractual notice period, but in no event shall such notices be given less than 30 days prior to the change. If a provider contract does not include such a termination without cause provision, or if a contract requires mutual written consent prior to schedule of fees changes such notices shall be given not less than 30 days prior to the change. No advance notice must be provided for the information in subdivision (2)a. of this subsection if the change has the effect of increasing fees, expanding health benefit plan coverage, or is made for patient safety considerations, in which case such notification may be made concurrent with the change. Information may be made available in any medium selected by the insurer, including an electronic medium, and notice of change may also be provided in the

medium of the insurer's choosing. Advance notice may be made by communicating with contracted providers via an electronic mailing list or other electronic means.

(2) a. An insurer shall make available to contracted providers the following:

1. The insurer's schedule of fees associated with the top 30 services or procedures most commonly billed by that class of provider, and, upon request, the full fee schedule for services or procedures billed by that class of provider; and

2. In the case of a contract incorporating multiple classes of providers, the insurer's schedule of fees associated with the top 30 services or procedures most commonly billed for each class of provider, and, upon request, the full fee schedule for services or procedures billed for each class of provider; and

3. A description of the insurer's claim submission and reimbursement policies.

b. In a case where an insurer makes reference to source information that is the basis for fees or a reimbursement policy and that source information is outside of the control of the insurer, the insurer's clear identification of the source and information on how the provider may readily access the source information shall satisfy the requirement to make the fees or policy available.

(3) For providers offered a contract by an insurer, the insurer shall make available its schedule of fees associated with the top 30 services or procedures most commonly billed by that class of provider, and, upon request, the full fee schedule for services or procedures billed by that class of provider, or for each class of provider in the case of a contract incorporating multiple classes of providers.

(4) Nothing herein shall prevent an insurer from requiring that providers keep confidential, and not disclose to third parties, the fee information provided under this subsection.

(5) Providers shall submit claims in accordance with insurers' claim submission and reimbursement policies.

(6) As used in this subsection, the term 'schedule of fees' includes, if applicable, CPT, HCPCS, ICD-9-CM codes, modifiers, and other applicable codes for the procedures most commonly billed for that class of provider.

(7) As used in this subsection, the term reimbursement policy means information relating to payment and including the following as applicable:

a. Policies on claims bundling and other claims editing processes;

b. Policies on recognition or nonrecognition of CPT code modifiers;
c. Policies on downcoding of services or procedures;
d. Definitions of global surgery periods;
e. Policies on multiple surgical procedures; and
f. Policies related to payment based on the relationship of procedure code to diagnosis code.

(8) As used in this subsection, the term 'insurer' shall not include an insurance company, service corporation, health maintenance organization, or multiple employee welfare arrangement that writes stand alone dental insurance.

(9) Insurers' provider contracts shall indicate the availability of the information required to be provided under this subsection.

(10) Except for the notice of changes to schedules of fees in subdivision (1) and the information required to be provided in subdivision (2)a.1. of this subsection, this subsection does not apply to claims processed by an insurer on a claims adjudication system that was implemented prior to January 1, 1982, provided that the insurer:
a. Verifies with the Commissioner that its claims adjudication system qualified under this subsection; and
b. Is implementing a new claims adjudication software system as soon as possible and in any event no later than December 31, 2004. This subdivision (10) shall expire on January 1, 2005.

(11) Except for the notice of changes to schedules of fees in subdivision (1) of this subsection, this subsection does not apply to claims processed by the Teachers' and State Employees' Comprehensive Major Medical Plan until December 31, 2005. This subdivision shall expire January 1, 2006."

SECTION 2. G.S. 58-3-191(b) is amended by adding the following new subdivision to read:

"**§ 58-3-191. Managed care reporting and disclosure requirements.**

(a) Each health benefit plan shall annually, on or before the first day of March of each year, file in the office of the Commissioner the following information for the previous calendar year:

...

(6) Aggregate data on requests for schedules of fees and reimbursement policies from participating providers under G.S. 58-3-225(n) and the health benefit plans' responses to those requests."

SECTION 3. Subdivisions (2)a.1. and (2)a.2. of this subsection are effective when they become law for contracts issued, modified, or renewed after that date. The remainder of this act becomes effective January 1, 2004.

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2003-2004 Biennium

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***KAREN COCHRANE-BROWN*, Staff Attorney (*Expertise:* FINANCIAL INSTITUTES AND COMMERCIAL LAW)**- Born in Hickory, raised in Beacon, New York. Received B.A. in Classical Greek Civilization and Political Science from Colgate University (1977); and J.D. from Albany Law School (1980). Admitted to the bars of New York and North Carolina. Clerked for New York Court of Appeals (1980-1983); worked as N.Y. Assistant Attorney General (1983-1984); and worked as Assistant Counsel to N.Y. State Teachers' Retirement System (1984-1992). Joined legislative staff in January 1993. Committees staffed include those on judiciary; financial institutions; administrative law; and pensions and retirement.

***WENDY GRAF RAY*, Staff Attorney (*Expertise:* ABC, COMMERCIAL LAW)**- Born in Springfield, Illinois, raised around the country. Received B.S. degree in Political Science from James Madison University, and J.D. from the University of Tennessee College of Law. Admitted to the TN and NC Bars. Joined the legislative staff in February, 2000. Committees staffed include those on judiciary; transportation; and children, youth, and families.

***WALKER REAGAN*, Staff Attorney (*Expertise:* ABC, ECONOMIC DEVELOPMENT, FINANCIAL INSTITUTES AND COMMERCIAL LAW)** - reared in Raleigh. Received an A.B. Degree (1974) in Political Science and Black Studies and a M.A. in Public Policy Sciences (1979) from Duke University; and a J.D. (1978) from the University of North Carolina at Chapel Hill. Practiced law in the Triangle area from 1978 until joining the legislative staff in May 1992. Committees staffed include those on judiciary, commerce, financial institutions, and ethics.

***STEVE ROSE*, Staff Attorney (UTILITIES)** - has lived in North Carolina since 1974. Graduated from University of Miami, 1965 with a B.B.A. in Finance. Received J.D. degree cum laude from University of Miami School of Law in 1968. Admitted to Florida Bar in 1968 and North Carolina Bar in 1976. In private practice in Florida and North Carolina from 1968 to 1983. Joined the legislative staff in February 1983. Committees staffed include those on judiciary, and public utilities.

***TIM HOVIS*, Staff Attorney (*Expertise:* INSURANCE)**– Born and raised in Dallas, North Carolina. B.A. in Economics and Political Science from UNC-Chapel Hill (1985). Received J.D. from UNC-Chapel Hill in 1988. Admitted to the North Carolina Bar in 1988. Engaged in private practice of law in Durham, specializing in defense litigation. Joined the Research Division of the N.C. General Assembly as a staff attorney (1991-2000). Committees staffed include those on judiciary; courts; manufacturing and labor; and ways and means.

Served as legislative analyst and counsel to the National Governors Association in Washington, D.C. 2000-2003. Rejoined the legislative staff in 2003.

***KORY GOLDSMITH*, Staff Attorney (*Expertise:* UTILITIES and INSURANCE)** – born and raised in Denver, Colorado. Graduated with a B.A. in History from the Colorado College (1982) before moving to North Carolina in 1984. Worked as a gardener in northwest Buncombe County for several years, then attended UNC-CH School of Law and received a J.D. in 1991. Practiced commercial law in Raleigh firm from 1991 until joining the legislative staff in 1995. Committees staffed include those on judiciary, education. Returned briefly to private practice, before rejoining the legislative staff in February of 2003.

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0070	Justice	PENDER SUBDIVISION REGULATION.	*SR	Ch. SL 2003-245	03-27-03	06-11-03
H0116	Hill	FARM MACHINERY LAW/ NOTICE OF TERMINATION.	*SR	Ch. SL 2003-195	05-01-03	06-03-03
H0173	Howard	COSMETIC ART/ CONTINUING ED/PENALTY CHANGE.	*S	Pres. To Gov. 7/ 16/2004	07-14-03	07-01-04
H0208	Wright	MANAGED CARE/HLTH BENEFITS CLARIFYING-AB.	*S	Re-ref Com On Rules, Calendar, and Operations of the House	05-05-03	05-06-03
H0270=	Setzer	INSURANCE TECHNICAL CORRECTIONS.-AB	SR	Ch. SL 2003-221	04-03-03	06-05-03
H0276	Setzer	INSURANCE FINANCIAL AMENDMENTS OMNIBUS.-AB	*SR	Ch. SL 2003-212	04-23-03	05-28-03
H0283	Nye	PROPERTY AND CASUALTY INSURANCE OMNIBUS.-AB	*SR	Ch. SL 2003-290	04-28-03	05-21-03
H0328	Howard	AMEND REAL ESTATE LICENSING LAWS/FEES.-AB	*SR	Ch. SL 2003-361	04-23-03	05-22-03
H0339=	Wright	LIFE AND HEALTH INSURANCE OMNIBUS.-AB	*S	Conf Com Appointed	05-05-03	06-18-03
H0356=	Tolson	FEES.	*S	Pres. To Gov. 7/ 16/2004	03-26-03	06-08-04
H0357	Barnhart	NO CREDIT CARD NUMBER ON RECEIPTS.	*SR	Ch. SL 2003-206	04-23-03	05-28-03
H0358	Starnes	INCREASE DAMAGE LIMITS FOR MV ACCIDENTS.	*SR	Ch. SL 2003-137	04-07-03	05-20-03
H0429	Culpepper	MONETARY COMP./ OUTDOOR ADVERTISING.	*S	Ref To Com On Rules and Operations of the Senate	05-24-04	06-22-04
H0475	Alexander	REGISTRATION OF BIRTH & DEATH CERTIFICATES.	SR	Ch. SL 2003-60	03-26-03	05-13-03
H0560	Holliman	DISAPPROVE CERTAIN LIFE INSURANCE RULES.	*SR	Ch. SL 2003-143	04-28-03	05-27-03
H0609=	Baker	ENHANCE AMUSEMENT DEVICE SAFETY.	*SR	Ch. SL 2003-170	04-30-03	05-27-03
H0635	Rayfield	INVISIBLE FENCE SYSTEMS--SIGNS REQUIRED.	*S	Ref To Com On Commerce	05-05-03	
H0744=	Hackney	MANAGED CARE PATIENT ASSISTANCE.	SR	Ch. SL 2003-105	04-22-03	05-20-03
H0829=	Holliman	ANNUITY NONFORFEITURE RATE CHANGE.	SR	Ch. SL 2003-144	04-28-03	05-27-03
H0859	Adams	BOARD OF FUNERAL SERVICE.	*S	Pres. To Gov. 7/ 16/2004	07-09-04	07-13-04
H0864=	Brubaker	GUARANTEED ENERGY SAVINGS CONTRACT EFFICIENCY.	*SR	Ch. SL 2003-138	04-29-03	05-27-03
H0888	Moore	PURCHASE FLEX/SCH TRANSPORTATION.	S	Re-ref Com On Rules and Operations of the Senate	05-05-03	05-06-03
H0892	Saunders	WORKERS COMP./CARRIER	*SR	Ch. SL 2003-235	05-05-03	06-04-03

'$' indicates the bill is an appropriation bill.
A bold line indicates the bill is an appropriation bill.
'*' indicates that the text of the original bill was changed by some action.
'=' indicates that the original bill is identical to another bill.

2003-2004 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		DRIVERS.				
H0895	Gibson	TEMP. RULES FOR GEN. CONTRS BOARD/BIDDING.	S	Ref To Com On Commerce	04-29-03	
H0900	Gibson	RESTAURANT ABC PERMITS.	SR	Ch. SL 2003-135	04-28-03	05-27-03
H0913	Brubaker	UNIVERSAL TELEPHONE SERVICE PROVIDER.	SR	Ch. SL 2003-99	05-01-03	05-20-03
H0964	Warner	FURNITURE REQUIREMENTS CONTRACTS.	*S	Pres. To Gov. 7/8/ 2004	05-05-03	06-24-04
H0974	Hill	PROHIBIT STATE PURCHASE OF RECONSTITUTED MILK.	*SR	Ch. SL 2003-367	05-05-03	06-05-03
H0986	Lucas	MV INSURER TO DISCLOSE FINANCIAL INTEREST.	*SR	Ch. SL 2003-395	05-05-03	06-09-03
H0994	K. Williams	PUBLIC WORKS EXEMPTION.	*SR	Ch. SL 2003-305	04-29-03	06-04-03
H0994	K. Williams	PUBLIC WORKS EXEMPTION.	*SR	Ch. SL 2003-305	06-11-03	06-18-03
H0999=	Hackney	TONER/INKJET CARTRIDGES.	*SR	Ch. SL 2003-386	05-01-03	07-09-03
H1023	Goodwin	UNINSURED/ UNDERINSURED MOTORIST COVERAGE.	*SR	Ch. SL 2003-311	05-01-03	06-16-03
H1065	L. Allen	REDEVELOPMENT COMM. PROPERTY CONVEYANCE.	*SR	Ch. SL 2003-66	05-01-03	05-13-03
H1066	Alexander	HEALTH PLANS DISCLOSE FEE SCHEDULES/CODING.	*SR	Ch. SL 2003-369	05-05-03	07-15-03
H1088	Barnhart	CONSUMERS' RIGHT-TO-KNOW ACT.	*S	Ref To Com On Commerce	05-05-03	
H1093	Culpepper	TECHNICAL AMENDMENTS/ INSURANCE GUARANTY ASSOC.	*SR	Ch. SL 2003-167	05-05-03	05-27-03
H1107	C. Wilson	FORTIFY AGAINST UNAUTHORIZED INSURANCE.	*S	Pres. To Gov. 7/ 16/2004	05-05-03	07-01-04
H1129	Fox	2003 OMNIBUS LABOR LAW CHANGES.	*SR	Ch. SL 2003-308	04-29-03	06-05-03
H1140	Allred	NORTH CAROLINA 'QUICK CLEARANCE' ACT.	*SR	Ch. SL 2003-310	05-01-03	06-04-03
H1152	Cole	CLARIFY DISCLOSURE MV TOTAL LOSS CLAIM.	*S	Re-ref Com On Rules, Calendar, and Operations of the House	05-05-03	06-23-04
H1181	Goodwin	WORKPLACE SAFETY/ REINSPECTIONS.	*SR	Ch. SL 2003-174	05-05-03	06-03-03
H1182	Goodwin	EXPAND USURY EXEMPTION.	*SR	Ch. SL 2003-401	05-05-03	06-03-03
H1201	Allred	CONSECUTIVE WATER SYSTEMS/MANUFACTURED HOMES.	SR	Ch. SL 2003-173	05-01-03	06-03-03
H1203=	Gibson	AMEND/STUDY MOTOR FUEL MARKETING ACT.	*S	Re-ref Com On Finance	05-05-03	05-06-03
H1213	Culpepper	MONETARY COMP/OUTDOOR ADVERTISING	*S	Pres. To Gov. 7/ 17/2004	05-05-03	05-06-03

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2003-2004 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H1213	Culpepper	MONETARY COMP/OUTDOOR ADVERTISING	*S	Pres. To Gov. 7/ 17/2004	05-27-03	06-18-03
H1370=	Saunders	WORKERS' COMP./ TRUCKING.	S	Ref To Com On Commerce	07-08-04	
H1463=	C. Wilson	HEALTH INSURANCE INNOVATIONS COMMISSION.	*S	Pres. To Gov. 7/ 18/2004	06-14-04	06-23-04
$ S0050	**Patrick J. Balla**	**HIGH-RISK INSURANCE POOL.**	**S**	**Ref to Commerce. If fav, re-ref to Appropriations/ Base Budget**	**02-17-03**	
S0107	Robert C. Carpen	MV INSURERS-NO MANDATE ON NONORIGINAL PARTS.	*S	Ref To Com On Judiciary III	02-20-03	04-17-03
S0108=	Robert C. Carpen	NO COMPREHENSIVE DEDUCTIBLE ON WINDSHIELDS.	S	Ref To Com On Commerce	02-20-03	
S0109=	Robert C. Carpen	MOTOR VEHICLE GLASS REPAIR.	*S	Ref To Com On Judiciary III	02-20-03	04-17-03
S0290	Katie G. Dorsett	GREENSBORO MINIMUM HOUSING CODES.	*SR	Ch. SL 2003-76	03-05-03	04-21-03
S0327	R. C. Soles, Jr.	CONFIRMING JOSEPH A. SMITH JR./COMM'R OF BANKS	SR	Ch. Res 2003-30	03-10-03	03-18-03
S0338=	Joe Sam Queen	REMOVE SUNSET/ MUNICIPAL ELECTRIC SERVICE.	SR	Ch. SL 2003-24	03-10-03	03-25-03
S0346=	William R. Purce	REPEAL LONG-TERM CARE INS. TAX CREDIT SUNSET.	S	Ref To Com On Commerce	03-11-03	
S0355=	Richard Stevens	WAKE FOREST FORCE LIMIT.	SR	Ch. SL 2003-32	03-11-03	04-01-03
S0378	Charlie S. Danne	311 SERVICE.	S	Ref To Com On Public Utilities	03-12-03	04-24-03
S0437	David W. Hoyle	GEN. CONTRS. BOARD/ BIDDING.	*SR	Ch. SL 2003-231	03-17-03	04-08-03
S0469	Fletcher L. Hart	UNFAIR TRADE PRACTICES/LIFE INSURANCE SALES.	*S	Re-ref Com On Insurance	03-20-03	04-17-03
S0486=	Joe Sam Queen	CUSTOMER INQUIRIES/ INSURANCE COVERAGE.	*SR	Ch. SL 2004-111	06-28-04	07-01-04
S0501=	John H. Kerr III	ENHANCE ELEVATOR & AMUSEMENT DEVICE SAFETY.	S	Ref To Com On Commerce	03-24-03	
S0506	Tony Rand	DISAPPROVE CERTAIN LIFE INSURANCE RULES.	S	Ref To Com On Commerce	03-24-03	
S0510	Eric Miller Reev	SAFETY AT AUTOMATIC TELLER MACHINES.	*S	Ref To Com On Financial Institutions	03-24-03	04-16-03
S0513	Philip E. Berger	ADJUST WORKERS' COMP. AWARD SCHEDULE.	S	Ref To Com On Commerce	03-24-03	
S0521	Tony Rand	PYROTECHNIC REGULATION ENHANCED.	*SR	Ch. SL 2003-298	03-25-03	04-21-03
S0536	David W. Hoyle	SMALL BUSINESS OMBUDSMAN OFFICE.	S	Ref to Commerce. If fav, re-ref to Appropriations/	03-26-03	

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2003-2004 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				Base Budget		
S0540	Fletcher L. Hart	APA RULES/ECONOMIC IMPACT REVIEW.	S	Ref To Com On Commerce	03-26-03	
S0550=	Kay R. Hagan	CREMATORY ACT CHANGES.	*SR	Ch. SL 2003-420	03-27-03	06-09-03
S0557	David W. Hoyle	REQUIRE DRUG TEST BEFORE LICENSURE/CAB DRIVER.	SR	Ch. SL 2003-65	03-27-03	04-15-03
S0558=	David W. Hoyle	DISCLOSURE OF PRIOR MV DAMAGE.	*SR	Ch. SL 2003-258	03-27-03	04-17-03
S0559=	David W. Hoyle	CLARIFY MV DEALER FRANCHISE LAWS.	*SR	Ch. SL 2003-113	03-27-03	04-17-03
S0560	Tony Rand	AMEND REAL ESTATE LICENSE LAWS.	S	Ref To Com On Commerce	03-27-03	
S0573=	Daniel G. Clodfe	MANAGED CARE PATIENT ASSISTANCE.	S	Ref To Com On Commerce	03-31-03	
S0589=	Eleanor Kinnaird	LIVABLE STATE MINIMUM WAGE.	S	Ref To Com On Commerce	03-31-03	
S0590	Eleanor Kinnaird	MORATORIUM ON SOFT DRINK CONTRACTS/ SCHOOLS.	S	Ref to Commerce. If fav, re-ref to Rules and Operations of the Senate	03-31-03	
S0595=	Philip E. Berger	CONSCIENCE PROTECTION/ CONTRACEPTIVES.	S	Ref To Com On Commerce	03-31-03	
S0603=	William R. Purce	LIFE AND HEALTH INSURANCE OMNIBUS.	S	Ref To Com On Commerce	03-31-03	
S0607	William R. Purce	MNGD CARE/HEALTH BENEFITS CLARIFYING CHANGES.	S	Ref To Com On Commerce	03-31-03	
S0613=	Fletcher L. Hart	CONTINUING CARE RET./ TECH. CHANGES.	S	Ref To Com On Commerce	03-31-03	
S0614=	Fletcher L. Hart	INSURANCE TECHNICAL CORRECTIONS.	S	Ref To Com On Commerce	03-31-03	
S0620=	Walter H. Dalton	PURCHASING FLEXIBILITY FOR SCHOOLS.	*SR	Ch. SL 2003-147	03-31-03	04-21-03
S0631	Daniel G. Clodfe	SELF-INSURED LOCALITIES.	S	Ref To Com On Commerce	04-01-03	
S0632=	Daniel G. Clodfe	WORKERS' COMP./ AGRICULTURAL EMPLOYMENT.	S	Ref To Com On Commerce	04-01-03	
S0655	Stephen M. Metca	AMEND LOCKSMITH ACT/ CRIMINAL CHECKS/FEES.	*SR	Ch. SL 2003-350	04-01-03	05-14-03
S0658	R. C. Soles, Jr.	APPELLATE PROCEDURE/ STATE BANKING COMMISSION.	*SR	Ch. SL 2003-63	04-01-03	04-14-03
S0661	Eric Miller Reev	PRISONER HEALTH INFORMATION/EMS CHANGES.	*SR	Ch. SL 2003-392	04-01-03	05-01-03
S0670	Fletcher L. Hart	CREDITABLE SERVICE/ WORKERS' COMPENSATION.	S	Re-ref Com On Pensions & Retirement and Aging	04-02-03	04-24-03
S0673	David W. Hoyle	CLARIFY FIRE TAX CALCULATION.-AB	S	Re-ref Com On Finance	04-02-03	04-15-03
$ S0675	**David W. Hoyle**	**CODE OFFICIALS**	**S**	**Ref to Commerce.**	**04-02-03**	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		PROFESSIONAL QUALIFICATIONS.		If fav, re-ref to Appropriations/ Base Budget		
S0676	David W. Hoyle	REVISE THE BANKING LAWS OF NORTH CAROLINA.	*S	Pres. To Gov. 7/ 14/2004	04-02-03	04-15-03
S0685=	David F. Weinste	CONFORM MORTGAGE LENDING LAWS.	S	Ref To Com On Commerce	04-02-03	
S0691	Scott Thomas	PROPERTY AND CASUALTY INSURANCE OMNIBUS.	S	Ref To Com On Commerce	04-02-03	
S0743=	Jeanne H. Lucas	ENERGY ASSISTANCE ACT.	S	Ref To Com On Commerce	04-03-03	
S0750	Kay R. Hagan	INCREASE PERMIT LIMIT FOR BREWERIES.	*SR	Ch. SL 2003-430	04-03-03	04-23-03
S0755=	Linda Garrou	SUPPLEMENTAL INSURANCE FOR RETIREES.	S	Ref To Com On Commerce	04-03-03	
S0758	Tony Rand	MORE SM. EMPLOYER HEALTH INS. AVAILABLE.	*S	Ref To Com On Insurance	04-03-03	04-23-03
S0767	Tom Apodaca	CONTRACT SURETY BONDS.	S	Ref To Com On Commerce	04-03-03	
S0769	Scott Thomas	BEACH PLAN HOMEOWNERS POLICY RATE SETTING.	*SR	Ch. SL 2003-158	04-03-03	04-24-03
S0770	Scott Thomas	INSURERS REVEAL FINANCIAL INT IN REPAIRERS.	S	Ref To Com On Commerce	04-03-03	
S0771	Scott Thomas	CREDIT SCORING LIMITATION.	*SR	Ch. SL 2003-216	04-03-03	04-23-03
S0773	Walter H. Dalton	COMM. COLL. FACILITY/ PUBLIC-PRIVATE P'SHIP.	*SR	Ch. SL 2003-286	04-03-03	04-14-03
S0775	Walter H. Dalton	PRELITIGATION MEDIATION OF INSURANCE CLAIMS.	*SR	Ch. SL 2003-307	04-03-03	04-14-03
S0777	Virginia Foxx	AMEND DEALER LICENSING LAW.	*SR	Ch. SL 2003-254	04-03-03	04-15-03
S0782=	Charlie S. Danne	HEALTH INSURANCE COVERAGE/EARLY INTERVENTION.	S	Ref To Com On Commerce	04-03-03	
S0785=	Fletcher L. Hart	ANNUITY NONFORFEITURE RATE CHANGE.	S	Ref To Com On Commerce	04-03-03	
S0787=	Eric Miller Reev	NO MOTOR FUEL SALES LIMITS.	S	Ref To Com On Commerce	04-03-03	
S0789	Jerry W. Tillman	MOTOR VEHICLE REPAIRS/ UNFAIR TRADE PRACTICES.	S	Ref To Com On Commerce	04-03-03	
S0799	David W. Hoyle	TELEPHONE SOLICITATIONS/CONSENT TO CHARGE.	*S	Ref To Com On Public Utilities	04-03-03	04-16-03
S0801	David W. Hoyle	INVESTIGATE CERTAIN TELECOM. ACTIVITIES.	*S	Ref To Com On Public Utilities	04-03-03	04-24-03
S0803	Tony Rand	CASINO NIGHTS.	S	Ref To Com On Commerce	04-03-03	
S0812	Tony Rand	SCHOOL-RELATED LICENSE SUSPENSION/ AUTO INS.	S	Ref To Com On Commerce	04-03-03	
S0813	Tony Rand	CONTROLLER'S FEE.	*S	Ref To Com On	04-03-03	04-16-03

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				Finance		
S0814	Tony Rand	CLARIFY COMPET. TELECOMMUNICATIONS STATUTES.	*SR	Ch. SL 2003-91	04-14-03	04-29-03
S0842=	Fern Shubert	PRESC. DRUG DISCOUNTS/ UNINSURED ELDERLY.	S	Ref To Com On Commerce	04-03-03	
S0846=	Wib Gulley	SOLAR ENERGY SYSTEMS.	*S	Re-ref Com On Judiciary IV	04-03-03	04-23-03
S0847	Wib Gulley	TENANT LATE FEES.	*SR	Ch. SL 2003-370	04-03-03	04-21-03
S0849=	Wib Gulley	NET METERING.	S	Ref To Com On Commerce	04-03-03	
S0861=	Daniel G. Clodfe	ADOPT INTERNATIONAL BUILDING CODE.	S	Ref To Com On Commerce	04-03-03	
S0872	Scott Thomas	UNWANTED TELEPHONE SOLICITATIONS.	*SR	Ch. SL 2003-411	04-03-03	04-29-03
S0887	Robert C. Carpen	OVARIAN CANCER DET./ HIGH RISK WOMEN.	*SR	Ch. SL 2003-223	04-03-03	04-23-03
S0900	Hugh Webster	TELEPHONE SOLICITATIONS/ INCREASE PENALTIES.	S	Ref to Commerce. If fav, re-ref to Finance	04-03-03	
S0905	Joe Sam Queen	RAISE STATE MINIMUM WAGE.	S	Ref To Com On Commerce	04-03-03	
S0913=	Daniel G. Clodfe	STREAMLINE BUILDING CODE.	S	Ref To Com On Commerce	04-03-03	
S0947	David W. Hoyle	CREDIT CARD NUMBERS ON RECEIPTS.	S	Ref To Com On Commerce	04-03-03	
S0963	A. B Swindell	PREVENT PRICE GOUGING DURING DISASTERS.	*SR	Ch. SL 2003-412	04-03-03	04-24-03
S0966	Walter H. Dalton	INSURANCE PERSONAL INFO. SAFEGUARDS.	*SR	Ch. SL 2003-262	04-03-03	04-10-03
S0967	Walter H. Dalton	INSURANCE FINANCIAL AMENDMENTS OMNIBUS.	S	Ref To Com On Commerce	04-03-03	
S0971=	Eleanor Kinnaird	TONER CARTRIDGE REUSE PROHIBITIONS VOID.	S	Ref To Com On Commerce	04-03-03	
S0991	Eric Miller Reev	IMPROVE STATE IT EFFICIENCY & PROJ. MGM'T.	*S	Pres. To Gov. 7/ 17/2004	04-03-03	04-29-03
S0995	Linda Garrou	SCHOOL CONSTRUCTION/ REPAIR FLEXIBILITY.	*SR	Ch. SL 2003-269	04-03-03	04-17-03
S1021=	R. C. Soles, Jr.	CONFIRM JO ANNE SANFORD UTILITIES COMMISSION.	SR	Ch. Res 2003-16	05-07-03	05-20-03
S1037	Tony P. Moore	CITY OF GREENVILLE-ABANDONED/JUNKED VEHICLES.	S	Ref To Com On Commerce	05-11-04	
S1038	Tony P. Moore	GREENVILLE PARKING DECK PROJECTS.	S	Ref To Com On Commerce	05-11-04	
S1043	John A. Garwood	AGGREGATE TRUCK WEIGHT LIMITS.	*S	Pres. To Gov. 7/ 13/2004	05-11-04	06-24-04
S1056	Walter H. Dalton	MONETARY COMPENSATION - OUTDOOR ADVERTISING.	S	Ref To Com On Commerce	05-12-04	
S1081=	Clark Jenkins	WORKERS' COMP./ TRUCKING.	S	Ref To Com On Commerce	05-13-04	
S1191=	R. C. Soles, Jr.	CONSTRUCTION OF PRISON IN COLUMBUS COUNTY.	S	Ref To Com On Rules, Calendar, and Operations of	05-20-04	06-08-04

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				the House		
1192	R. C. Soles, Jr.	MV TRANSFER/ DISCLOSURE OF TOTAL LOSS CLAIM.	S	Re-ref Com On Commerce	06-09-04	
S1223=	David W. Hoyle	HEALTH INSURANCE INNOVATIONS COMMISSION.	*S	Ref To Com On Insurance	05-20-04	06-08-04
$ S1263	**Daniel G. Clodfe**	**NOTICE OF ADD'L BUILDING CODE REQUIREMENTS.**	**S**	**Ref to Commerce. If fav, re-ref to Appropriations/ Base Budget**	**05-24-04**	
S1399	Tony Rand	GRAPE COUNCIL FUNDS AND WINE DEFINITIONS.	S	Ref to Commerce. If fav, re-ref to Appropriations/ Base Budget	05-28-04	

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Principal Clerk ____
Reading Clerk ____

Corrected: THIS MEETING HAS BEEN CANCELLED.

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Commerce** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 1, 2004	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1191	Construction of Prison in Columbus County.	Senator Soles
SB 1056	Monetary Compensation - Outdoor Advertising.	Senator Dalton
SB 1223	Health Insurance Innovations Commission.	Senator Hoyle
SB 1263	Notice of Add'l Building Code Requirements.	Senator Clodfelter

Senator R. C. Soles, Jr., Chair

Principal Clerk ____
Reading Clerk ____

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Senator R. C. Soles, Jr., Chair

SENATE COMMERCE COMMITTEE

Tuesday, June 8, 2004, 11:00 A.M.

1124 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1191	Construction of Prison in Columbus County.	Senator Soles
SB 1223	Health Insurance Innovations Commission.	Senator Hoyle

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, June 8, 2004 at 11:00 a.m.
Room 1124, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, June 8, 2004, in Room 1124 of the Legislative Building. Eighteen members of the committee were present. Senator R. C. Soles, Jr., presided. He announced that SB 1056, Monetary Compensation – Outdoor Advertising, was being taken off the agenda for today's meeting and will be taken up later.

Senator Soles asked Senator David Hoyle, Vice Chair, to preside while he explained SB 1191, Construction of Prison in Columbus County. Senator R. B. Sloan moved a favorable report of the bill. The motion carried.

Senator Soles asked Senator Hoyle to explain SB 1223, Health Insurance Innovations Commission. Ms. Perri Morgan, representing the National Federation of Independent Business, was recognized to make comments in favor of the bill. Senator Tony Rand offered an amendment, which was read to the committee by Senator Soles. Senator Rand moved adoption of the amendment. The motion carried. Senator Rand moved that SB 1223, as amended, be given a favorable report and that it be made into a committee substitute. The motion carried.

The meeting adjourned at 11:35 a.m.

Senator R. C. Soles, Jr., Chair

Joan Leatherman, Acting Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, June 08, 2004

Senator SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **1191** Construction of Prison in Columbus County.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, June 08, 2004

Senator SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1223** Health Insurance Innovations Commission.

Draft Number:	PCS 75341
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1191*

Short Title:	Construction of Prison in Columbus County.	(Public)
Sponsors:	Senator Soles.	
Referred to:	Commerce.	

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE COLUMBUS COUNTY PRISON BE CONSTRUCTED IN ACCORDANCE WITH THE SAME NORTH CAROLINA STATE BUILDING CODE UNDER WHICH THE PRISONS IN SCOTLAND, ANSON, ALEXANDER, GREENE, AND BERTIE COUNTIES WERE CONSTRUCTED.

The General Assembly of North Carolina enacts:

SECTION 1. The 1000-cell close security prototypical prison to be constructed in Columbus County shall be constructed in accordance with the North Carolina State Building Code, 1996 Edition through 1999 revisions, if construction starts before July 1, 2005. This section applies only if the construction documents have been reviewed and approved by the Department of Insurance, the State Construction Office, and the Department of Correction.

SECTION 2. This act becomes effective July 1, 2004.

SENATE BILL 1191:
Construction of Prison in Columbus County.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Senator. Soles
Date:	June 8, 2004	**Summary by:**	O. Walker Reagan,
Version:	First Edition		Committee Co-Counsel

SUMMARY: ***Senate Bill 1191 would exempt a new prison to be constructed in Columbus County from State Building Code changes made since 1999.***

CURRENT LAW: The State Building Code in affect at the time construction commences applies to all new construction.

BILL ANALYSIS: Senate Bill 1191 would apply the North Carolina State Building Code, 1996 Edition, as amended through 1999, to construction of 1000-cell prison if construction is begun by July 1, 2005, provided that the construction documents are reviewed and approved by the Department of Insurance, the Department of Corrections and the State Construction Office.

BACKGROUND: This prison will utilize the design of five other prison built by the State recently. The first three prisons, located in Alexander, Scotland, and Anson counties, were constructed during between 1996 and 1999 before changes were made in the State Building Code. The last two prisons constructed in Bertie and Greene counties were constructed after the 1999 building code revisions. Exemptions from the subsequent Code changes were granted by the General Assembly in 2003. Those exceptions are identical to the exemptions from the current building code being proposed in Senate Bill 1191. The building code revisions made after 1999 incorporated elements of the International Building Code that called for increased seismic adjustments on the structures as well as a fire sprinkler system in every cell. Senate Bill 1191 would allow the Department of Corrections to use the same design and construction of this prison as has been used for the other five prisons most recently built, allowing for uniformity among the prison designs resulting in savings in the costs of design changes, construction costs, and building cost increases of up to $2,500,000.

EFFECTIVE DATE: The bill becomes effective July 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1223*

Short Title:	Health Insurance Innovations Commission.	(Public)
Sponsors:	Senators Hoyle, Apodaca, Garwood, Hagan, Hargett, Malone, Smith, Swindell, and Thomas.	
Referred to:	Commerce.	

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE INNOVATIONS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Findings and Purpose. – The General Assembly finds that a crisis exists in the availability and affordability of adequate health insurance coverage for small business owners and employees in this State. These findings indicate that greater than fifty percent (50%) of the statewide workforce is employed by small business, that there are 1,154,000 North Carolinians who are not covered by health insurance, and that more than sixty percent (60%) of these citizens either own or work for a small business, or are the dependent of a small business owner or employee. The findings further indicate that 16 health insurance carriers left the North Carolina small group health coverage market in 2001, an all-time high, that virtually no small group health insurance carriers have entered the North Carolina market in the last two years, and that dramatic increases in premium rates is the primary reason for the alarming decrease in availability of health insurance coverage for small business. The purpose of this act is to quickly and effectively address this crisis through the collaborative efforts of persons involved in and affected by the declining availability of health insurance for the State's small employer workforce. It is the intent of the General Assembly to achieve this purpose through the establishment of the North Carolina Health Insurance Innovations Commission in accordance with this act.

SECTION 2. Commission Established. – There is established the North Carolina Health Insurance Innovations Commission. The Commission shall consist of 24 members, appointed as follows:

(1) Twelve members appointed by the General Assembly, six upon the recommendation of each of the Speakers of the House of Representatives. Upon appointment each speaker shall designate a cochair.

(2) Twelve members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate. Upon appointment, the President Pro Tempore shall designate a cochair.

The appointing authorities shall ensure that members of the Commission are representative of the following: three who represent health insurers, three physicians licensed to practice in this State, three who represent hospitals located in this State, two who represent businesses with fewer than 50 fifty employees, two who represent businesses with 50 fifty employees or more, one who represents insurance brokers or agents, and one who represents health researchers and policy experts. The appointing authorities shall also ensure that appointments reflect representation among the regions of the State.

SECTION 3.(a) Commission Duties and Responsibilities. – The Commission shall do the following:

(1) Adopt procedures and implement other administrative requirements necessary to carry out its duties under this act.

(2) Identify and evaluate comprehensively the problems small employers face when they attempt to obtain health insurance coverage for themselves and their employees, and consider the impact these problems have for large employees and the communities they serve.

(3) Initiate regional demonstration projects to pilot innovative health care plans and products to address the problems identified. Innovative products may include piloted community education programs targeted at top illnesses in an effort to increase early detection of these illnesses. Innovative plans may also include piloted programs targeted at increasing the demand for health insurance coverage by both employers and employees through the use of policy incentives. Innovative plans and products are subject to the approval of the Commissioner of Insurance as provided in Section 5 of this act.

(4) Develop clear and substantive recommendations for actions that must be taken by health insurance carriers, health care providers, government, small business employers, large business employers, consumers and consumer groups, in order to improve the availability and affordability of small employer health insurance coverage within the next three years.

(5) Provide a report on the Commission's activities to the 2005 General Assembly, Regular Session 2006, upon its convening. Reports to the General Assembly shall include proposed legislation necessary to carry out the purposes of this act.

SECTION 3.(b) The Commission shall consider the following issues and strategies in developing regional demonstration projects and other approaches to address the rising cost of health care:

(1) Feasibility of establishing chronic disease management programs similar to those that are working successfully in this State and other states.

(2) The cost-effectiveness of existing and proposed health insurance coverage mandates.
(3) Promoting collaboration among providers, insurers, government agencies, and consumers to improve health care affordability.
(4) Promoting consumer education about available insurance products and promoting education of small business owners about the available insurance products, available services to assist them in understanding and selecting appropriate insurance plans, and current small business tax benefits regarding health insurance deductions.
(5) Review and evaluate "consumer driven" benefit plans.
(6) Increasing efforts and resources to educate and motivate consumers to use health care resources appropriately.
(7) Rewarding technological innovation based in quality and evidence-based outcomes that provide increased value to consumers over existing treatments.
(8) Encourage case management of high utilizers.
(9) Promoting evidence-based medicine.

SECTION 4. Meetings; Staff; Funding. – Members shall serve an initial two-year term and may be reappointed for an additional two-year term. The Commission shall secure federal or private funds to conduct meetings, hire professional staff, support demonstration plans and products, and cover any other costs incurred by the Commission in carrying out its duties under this act. The Department of Insurance shall, at the request of the Commission, provide technical assistance in the preparation of grant proposals for federal and other non-State funding to support the work of the Commission, in the preparation of forms, and in other related matters. The Commission may meet in the Legislative Building or the Legislative Office Building, as approved by the Legislative Services Commission, or at any other location deemed appropriate by the Health Insurance Innovations Commission. The Commission may enter into agreements and allocate federal or private funds obtained by the Commission with the University of North Carolina at Charlotte and other public or private entities to provide meeting space, professional services and support staff, and other services necessary for the Commission to carry out its duties and responsibilities under this act.

SECTION 5. Waiver of Rules. – The Commissioner of Insurance shall review all pilot programs and innovative plans and products proposed by the North Carolina Health Insurance Innovations Commission. If the Commissioner determines that the proposed programs, plans, or products are in the interest of the citizens of this State and are not contrary to the public policy of this State, then the Commissioner may approve them. If the approved programs, plans, or products are in conflict with or contrary to rules adopted by the Commissioner, the Commissioner may waive the rules adopted by the Commissioner to allow implementation of the programs, plans, or products. Waivers granted by the Commissioner under this section shall expire three years from the date the waiver is granted or December 31, 2008, whichever occurs first.

SECTION 6. Funds obtained by the North Carolina Health Innovations Commission for operations and programs of the Commission shall be deposited with the

State Treasurer for credit to the Legislative Services Office. The Legislative Services Office shall allocate these funds for reimbursement to the Commission for operation and program costs incurred.

SECTION 7. Nothing in this act obligates the General Assembly to appropriate funds to implement this act. This act becomes effective July 1, 2004.

SENATE BILL 1223:
Health Insurance Innovations Commission

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	Senator Hoyle
Date:	June 8, 2004	**Summary by:**	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: ***HB 1463 establishes the North Carolina Health Insurance Innovations Commission to study the problems small employers face when seeking health insurance coverage for themselves and their employees, to initiate programs to pilot innovative health care plans and products, and to develop recommendations for insurance providers, health care providers, government, business employers, consumers, and consumer groups to improve the availability and affordability of small employer health insurance within the next three years.***

BACKGROUND:

Over 50% of North Carolina's workforce is employed by small business employers. More than 60% of North Carolina's 1,154,000 workers either own or work for a small business. In 2001, sixteen health insurance carriers left the North Carolina small group market and no new small group health insurance carriers have entered the market for the past two years. Dramatic increases in premium rates are the primary reason for the decrease in availability of health insurance coverage for small businesses.

This bill is a recommendation of the Joint Select Committee on Small Business Economic Development.

BILL ANALYSIS:

Section 1 of the bill sets out the findings and purpose for the bill.

Section 2 of the bill establishes the North Carolina Health Insurance Innovations Commission.

Section 3. (a) of the bill identifies Commission member duties and responsibilities.

Section 3.(b) of the bill directs the Commission to consider certain issues and strategies in developing regional demonstration projects and other attempts to address the rising cost of health care. These issues and strategies include chronic disease management programs, health insurance mandates, collaboration among providers, insurance companies and consumers, consumer education, "consumer driven" benefit plans, technological innovation, case management for high utilizers, and the use of promoting evidence-based medicine.

Section 4 of the bill establishes two year terms for Commission members. The Commission shall secure federal or private funds to support the work of the Commission. The Department of Insurance shall provide technical assistance to the Commission to seek grants for federal and other non-State funding. The Commission may also enter into agreements and allocate federal or private funds with the University of North Carolina at Charlotte and other public or private entities to provide meeting space, professional services, support staff and other necessary services.

Section 5 of the bill directs the Commissioner of Insurance to review all pilot programs, plans, and products proposed by the Commission. The Commissioner may approve programs, plans, and products if they are of interest to the citizens of NC and not contrary to public policy. If approved programs, plans, or products conflict with DOI rules, the Commissioner may waive the rules to allow implementation of

programs, plans, or products. Waivers shall expire three years from the date of the waiver or December 31, 2008, whichever occurs first.

Section 6 of the bill directs the Commission to deposit funds obtained by the Commission for operations and programs with the State Treasurer for credit to the Legislative Services Office. The Legislative Services Office shall allocate these funds for reimbursement to the Commission for operations and program costs.

Section 7 of the bill states that the General Assembly is not obligated to appropriate funds to implement the bill and that the bill becomes effective July 1, 2004

Effective Date: The bill becomes effective July 1, 2004.

*This summary was contributed to by Ms. Sandra Alley, Staff Attorney.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. _____ DATE 6/8/04

S. B. No. 1223 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

Page 1 of 2

moves to amend the bill on page 3, lines 38-42

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

" approve them. If the approved programs, plans, products are in conflict with or contrary to rules adopted by the Commissioner, the Commissioner may adopt temporary rules to allow implementation of the program, plans, or products. [redacted] 30 days prior to implementation of any new program, plan, or product, the program plan or product shall be reported to the Joint Legislative Commission on Governmental Operations.

SIGNED Tony Rand

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. _____

S. B. No. 1223

COMMITTEE SUBSTITUTE _____

DATE 6/8/04

Amendment No. _____
(to be filled in by Principal Clerk)

Rep.)
) _____
Sen.)

Page 2 of 2

moves to amend the bill on page _____, line _____

( ) WHICH CHANGES THE TITLE

by _____

Nothing herein shall be deemed to increase the power of the Commissioner as otherwise authorized by law."

SIGNED Tony Rand

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE
COMMITTEE SUBSTITUTE

JUN 3 2004

ADOPTED

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

SENATE BILL 1223*
PROPOSED COMMITTEE SUBSTITUTE S1223-PCS75341-RG-31

Short Title: Health Insurance Innovations Commission. (Public)

Sponsors:

Referred to:

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE INNOVATIONS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Findings and Purpose. – The General Assembly finds that a crisis exists in the availability and affordability of adequate health insurance coverage for small business owners and employees in this State. These findings indicate that greater than fifty percent (50%) of the statewide workforce is employed by small business, that there are 1,154,000 North Carolinians who are not covered by health insurance, and that more than sixty percent (60%) of these citizens either own or work for a small business, or are the dependent of a small business owner or employee. The findings further indicate that 16 health insurance carriers left the North Carolina small group health coverage market in 2001, an all-time high, that virtually no small group health insurance carriers have entered the North Carolina market in the last two years, and that dramatic increases in premium rates is the primary reason for the alarming decrease in availability of health insurance coverage for small business. The purpose of this act is to quickly and effectively address this crisis through the collaborative efforts of persons involved in and affected by the declining availability of health insurance for the State's small employer workforce. It is the intent of the General Assembly to achieve this purpose through the establishment of the North Carolina Health Insurance Innovations Commission in accordance with this act.

SECTION 2. Commission Established. – There is established the North Carolina Health Insurance Innovations Commission. The Commission shall consist of 24 members, appointed as follows:

(1) Twelve members appointed by the General Assembly, six upon the recommendation of each of the Speakers of the House of Representatives. Upon appointment, each speaker shall designate a cochair.

(2) Twelve members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate. Upon appointment, the President Pro Tempore shall designate a cochair.

The appointing authorities shall ensure that members of the Commission are representative of the following: three who represent health insurers, three physicians licensed to practice in this State, three who represent hospitals located in this State, two who represent businesses with fewer than 50 employees, two who represent businesses with 50 employees or more, one who represents insurance brokers or agents, and one who represents health researchers and policy experts. The appointing authorities shall also ensure that appointments reflect representation among the regions of the State.

SECTION 3.(a) Commission Duties and Responsibilities. – The Commission shall do the following:

(1) Adopt procedures and implement other administrative requirements necessary to carry out its duties under this act.

(2) Identify and evaluate comprehensively the problems small employers face when they attempt to obtain health insurance coverage for themselves and their employees and consider the impact these problems have for large employees and the communities they serve.

(3) Initiate regional demonstration projects to pilot innovative health care plans and products to address the problems identified. Innovative products may include piloted community education programs targeted at top illnesses in an effort to increase early detection of these illnesses. Innovative plans may also include piloted programs targeted at increasing the demand for health insurance coverage by both employers and employees through the use of policy incentives. Innovative plans and products are subject to the approval of the Commissioner of Insurance as provided in Section 5 of this act.

(4) Develop clear and substantive recommendations for actions that must be taken by health insurance carriers, health care providers, government, small business employers, large business employers, consumers and consumer groups, in order to improve the availability and affordability of small employer health insurance coverage within the next three years.

(5) Provide a report on the Commission's activities to the 2005 General Assembly, Regular Session 2006, upon its convening. Reports to the General Assembly shall include proposed legislation necessary to carry out the purposes of this act.

SECTION 3.(b) The Commission shall consider the following issues and strategies in developing regional demonstration projects and other approaches to address the rising cost of health care:

(1) Feasibility of establishing chronic disease management programs similar to those that are working successfully in this State and other states.

(2) The cost-effectiveness of existing and proposed health insurance coverage mandates.
(3) Promoting collaboration among providers, insurers, government agencies, and consumers to improve health care affordability.
(4) Promoting consumer education about available insurance products and promoting education of small business owners about the available insurance products, available services to assist them in understanding and selecting appropriate insurance plans, and current small business tax benefits regarding health insurance deductions.
(5) Review and evaluate "consumer-driven" benefit plans.
(6) Increasing efforts and resources to educate and motivate consumers to use health care resources appropriately.
(7) Rewarding technological innovation based on quality and evidence-based outcomes that provide increased value to consumers over existing treatments.
(8) Encourage case management of high utilizers.
(9) Promoting evidence-based medicine.

SECTION 4. Meetings; Staff; Funding. – Members shall serve an initial two-year term and may be reappointed for an additional two-year term. The Commission shall secure federal or private funds to conduct meetings, hire professional staff, support demonstration plans and products, and cover any other costs incurred by the Commission in carrying out its duties under this act. The Department of Insurance shall, at the request of the Commission, provide technical assistance in the preparation of grant proposals for federal and other non-State funding to support the work of the Commission in the preparation of forms and in other related matters. The Commission may meet in the Legislative Building or the Legislative Office Building, as approved by the Legislative Services Commission, or at any other location deemed appropriate by the Health Insurance Innovations Commission. The Commission may enter into agreements and allocate federal or private funds obtained by the Commission with the University of North Carolina at Charlotte and other public or private entities to provide meeting space, professional services and support staff, and other services necessary for the Commission to carry out its duties and responsibilities under this act.

SECTION 5. Waiver of Rules. – The Commissioner of Insurance shall review all pilot programs and innovative plans and products proposed by the North Carolina Health Insurance Innovations Commission. If the Commissioner determines that the proposed programs, plans, or products are in the interest of the citizens of this State and are not contrary to the public policy of this State, then the Commissioner may approve them. If the approved programs, plans, or products are in conflict with or contrary to rules adopted by the Commissioner, the Commissioner may adopt temporary rules to allow implementation of the programs, plans, or products. Any new program, plan, or product shall be reported to the Joint Legislative Commission on Governmental Operations 30 days prior to its implementation. Nothing herein shall be deemed to increase the power of the Commissioner as otherwise authorized by law.

SECTION 6. Funds obtained by the North Carolina Health Innovations Commission for operations and programs of the Commission shall be deposited with the State Treasurer for credit to the Legislative Services Office. The Legislative Services Office shall allocate these funds for reimbursement to the Commission for operation and program costs incurred.

SECTION 7. Nothing in this act obligates the General Assembly to appropriate funds to implement this act. This act becomes effective July 1, 2004.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 8, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Crawford	A/A North Carolina
Richard Spadling	NHO
Bill Wilkes	N.C. Dept of Revenue
[signature]	AT&T
Jim Prideen	Fairway Outdoor Adv.
Chad Essick	Poyner & Spruill LLP
Bobby McMurry	NC Bar Association
Gary Harris	NC Petroleum Marketers
Greg McLeod	NC A.G. General's Office
Robert C. Pasch	Young, Moore
Susan Falanga	Nationwide
FRANK W. FOLGER	NCDOT

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 8, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PERRI MORGAN	NFIB.
MARION SMITT	GSK
Henry Jones	Attorney Raleigh
Tony Adams	NCAA
T Jerry Williams	NCRA
PGP	NCFB
Kathy Hawkins	Progress Energy
Fran Perry	Duke Energy
Dick Carlton	Carlton & Alexander PLLC
Kerry Scherry	St. Andrews Presbyterian College
	Poyner Call & Spruill

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 8, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nan Douglass	NC Rural Econ Dvlt Ctr
Grady McNeill	NC. Conservation Network.
Adrienne Harris	N.C. Conservation Network
Joe Dulk	Gov Office
Luke Canty	Gov. of
Sara Brodnax	CCNC
Henry M Lancaster III	LCA
Paul Pulley	Pulley, Watson Kyle
R. Paul Wilms	NCHBA
Dana Simpson	Smith Anderson
Barbara Carnes	BSCGR

SENATE COMMERCE COMMITTEE
Tuesday, June 15, 2004 at 3:40 p.m.
Senate Chamber, Legislative Building

MINUTES

The Senate Commerce Committee met at 3:40 p.m. on Tuesday, June 15, 2004, in the Senate Chamber of the Legislative Building. Eighteen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles asked Senator Tony Rand, Vice Chair, to preside while he explained SB 1192, MV Transfer/Disclosure of Total Loss Claim. Senator Soles moved the adoption of a proposed committee substitute. The motion carried. Senator Soles explained that the bill answers the concerns of the North Carolina Automobile Dealers Association that arose after SB 558, Disclosure of Prior MV Damage. Ms. Susan Valauri, representing Nationwide Insurance and Affiliates, said the language of the proposed committee substitute was approved by the insurance industry. Senator Hoyle moved that SB 1192 be given an unfavorable report as to bill, but favorable as to the proposed committee substitute. The motion carried.

The meeting adjourned at 3:45 p.m.

R. C. Soles, Jr.
Senator R. C. Soles, Jr., Chair

Dot Waugaman
Dot Waugaman, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1192

Short Title:	MV Transfer/Disclosure of Total Loss Claim.	(Public)
Sponsors:	Senator Soles.	
Referred to:	Appropriations/Base Budget.	

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO REQUIRE TRANSFERORS OF MOTOR VEHICLES TO DISCLOSE TO TRANSFEREES THAT THE VEHICLE HAS BEEN DECLARED A TOTAL LOSS BY AN INSURANCE COMPANY, TO DELETE THE REQUIREMENT THAT A "TOTAL LOSS CLAIM" NOTATION BE PUT ON THE TITLE AND REGISTRATION CARD, TO REQUIRE INSURANCE COMPANIES TO INSERT A PERMANENT MARKER INTO THE DOORJAMB OF A VEHICLE WHEN IT HAS PAID A CLAIM EXCEEDING TWENTY-FIVE PERCENT OF THE VEHICLE'S RETAIL VALUE, AND TO APPROPRIATE FUNDS TO IMPLEMENT THE PROVISIONS OF THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-71.3 reads as rewritten:

"**§ 20-71.3. Salvage and other vehicles – titles and registration cards to be branded.**

(a) Motor vehicle certificates of title and registration cards issued pursuant to G.S. 20-57 shall be branded in accordance with this section.

As used in this section, "branded" means that the title and registration card shall contain a designation that discloses if the vehicle is classified as any of the following:

(1) Salvage Motor Vehicle.
(2) Salvage Rebuilt Vehicle.
(3) Reconstructed Vehicle.
(4) Flood Vehicle.
(5) Non-U.S.A. Vehicle.
(6) Any other classification authorized by law.

(a1) Any motor vehicle that is declared a total loss by an insurance company licensed and approved to conduct business in North Carolina, in addition to the designations noted in subsection (a) of this section, ~~shall:~~shall

~~(1) Have the title and registration card marked "TOTAL LOSS CLAIM".~~

~~(2)~~ ~~Have~~ have a tamperproof permanent marker inserted into the doorjamb of that vehicle by the Division, at the time of the final inspection of the

reconstructed vehicle, that states "TOTAL LOSS CLAIM VEHICLE". Should that vehicle be later reconstructed, repaired, or rebuilt, a permanent tamperproof marker shall be inserted in the doorjamb of the reconstructed, repaired, or rebuilt vehicle.

(a2) If a motor vehicle is damaged by collision or other occurrence, and an insurance company licensed and approved to conduct business in North Carolina has paid a claim that exceeds twenty-five percent (25%) of the vehicle's fair market retail value, and the vehicle has not been declared a total loss, the insurance company shall insert into the doorjamb of that vehicle, at the time the claim is paid, a tamperproof permanent marker that states "INSURANCE CLAIM VEHICLE". Should that vehicle be later reconstructed, repaired, or rebuilt, a tamperproof permanent marker shall be inserted into the doorjamb of the reconstructed, repaired, or rebuilt vehicle.

(b) Any motor vehicle up to and including six model years old damaged by collision or other occurrence, that is to be retitled in this State, shall be subject to preliminary and final inspections by the Enforcement Section of the Division. For purposes of this section, the term "six model years" shall be calculated by counting the model year of the vehicle's manufacture as the first model year and the current calendar year as the final model year.

These inspections serve as antitheft measures and do not certify the safety or road-worthiness of a vehicle.

(c) The Division shall not retitle a vehicle described in subsection (b) of this section that has not undergone the preliminary and final inspections required by that subsection.

(d) Any motor vehicle up to and including six model years old that has been inspected pursuant to subsection (b) of this section may be retitled with an unbranded title based upon a title application by the rebuilder with a supporting affidavit disclosing all of the following:

(1) The parts used or replaced.
(2) The major components replaced.
(3) The hours of labor and the hourly labor rate.
(4) The total cost of repair.
(5) The existence, if applicable, of the doorjamb "TOTAL LOSS CLAIM VEHICLE" marker.

The unbranded title shall be issued only if the cost of repairs, including parts and labor, does not exceed seventy-five percent (75%) of its fair market retail value.

(e) Any motor vehicle more than six model years old damaged by collision or other occurrence that is to be retitled by the State may be retitled, without inspection, with an unbranded title based upon a title application by the rebuilder with a supporting affidavit disclosing all of the following:

(1) The parts used or replaced.
(2) The major components replaced.
(3) The hours of labor and the hourly labor rate.
(4) The total cost of repair.

(5) The existence, if applicable, of the doorjamb "TOTAL LOSS CLAIM VEHICLE" marker.

(6) The cost to replace the air bag restraint system.

The unbranded title shall be issued only if the cost of repairs, including parts and labor and excluding the cost to replace the air bag restraint system, does not exceed seventy-five percent (75%) of its fair market retail value.

(f) The Division shall maintain the affidavits required by this section and make them available for review and copying by persons researching the salvage and repair history of the vehicle.

(g) Any motor vehicle that has been branded in another state shall be branded with the nearest applicable brand specified in this section, except that no junk vehicle or vehicle that has been branded junk in another state shall be titled or registered.

(h) A branded title for a salvage motor vehicle damaged by collision or other occurrence shall be issued as follows:

(1) For motor vehicles up to and including six model years old, a branded title shall be issued if the cost of repairs, including parts and labor, exceeds seventy-five percent (75%) of its fair market value at the time of the collision or other occurrence.

(2) For motor vehicles more than six model years old, a branded title shall be issued if the cost of repairs, including parts and labor and excluding the cost to replace the air bag restraint system, exceeds seventy-five percent (75%) of its fair market value at the time of the collision or other occurrence.

(i) Once the Division has issued a branded title for a motor vehicle all subsequent titles for that motor vehicle shall continue to reflect the branding.

(j) The Division shall prepare necessary forms and doorjamb marker specifications and may adopt rules required to carry out the provisions of this Part."

SECTION 2. G.S. 20-71.4 reads as rewritten:

"**§ 20-71.4. Failure to disclose damage to a vehicle shall be a misdemeanor.**

(a) It shall be unlawful for any transferor of a motor vehicle to do any of the following:

(1) Transfer a motor vehicle up to and including five model years old when the transferor has knowledge that the vehicle has been involved in a collision or other occurrence to the extent that the cost of repairing that vehicle, excluding the cost to replace the air bag restraint system, exceeds twenty-five percent (25%) of its fair market retail value at the time of the collision or other occurrence, without disclosing that fact in writing to the transferee prior to the transfer of the vehicle.

(2) Transfer a motor vehicle when the transferor has knowledge that the vehicle is, or was, a flood vehicle, a reconstructed vehicle, or a salvage motor vehicle, without disclosing that fact in writing to the transferee prior to the transfer of the vehicle.

(3) Transfer a motor vehicle that has been rebuilt, after being declared a total loss by an insurance company licensed and approved to conduct

business in North Carolina, without disclosing that fact in writing to the transferee prior to the transfer of the vehicle. The transferor shall attach to the title, at the time of transfer, a copy of the disclosure, signed by the transferee, along with a copy of the rebuilder's affidavit, as required by G.S. 20-71.3(d) or (e). These documents shall be submitted to the Division at the time the transferee applies for a new certificate of title. These documents shall be maintained by the Division, and the Division shall notify any individual applying for a new certificate of title on that vehicle if the appropriate documents are not attached.

(a1) For purposes of this section, the term "five model years" shall be calculated by counting the model year of the vehicle's manufacture as the first model year and the current calendar year as the final model year. Failure to disclose any of the information required under subsection (a) of this section that is within the knowledge of the transferor will also result in civil liability under G.S. 20-348. The Commissioner may prepare forms to carry out the provisions of this section.

(b) It shall be unlawful for any person to remove the title or supporting documents to any motor vehicle from the State of North Carolina with the intent to conceal damage (or damage which has been repaired) occurring as a result of a collision or other occurrence.

(c) It shall be unlawful for any person to remove, tamper with, alter, or conceal the "TOTAL LOSS CLAIM VEHICLE" tamperproof permanent marker that is affixed to the doorjamb of any total loss claim ~~vehicle.~~vehicle or the "INSURANCE CLAIM VEHICLE" tamperproof permanent marker that is affixed to the doorjamb of any vehicle on which an insurance claim has been paid that exceeds twenty-five percent (25%) of the vehicle's fair market retail value. It shall be unlawful for any person to reconstruct a total loss claim vehicle and not include or affix a "TOTAL LOSS CLAIM VEHICLE" tamperproof permanent marker to the doorjamb of the rebuilt vehicle. Violation of this subsection shall constitute a Class I felony, punishable by a fine of not less than five thousand dollars ($5,000) for each offense.

(d) Violation of subsections (a) and (b) of this section shall constitute a Class 2 misdemeanor."

SECTION 3. There is appropriated from the Highway Fund to the Division of Motor Vehicles of the Department of Transportation one hundred thousand dollars ($100,000) to implement the provisions of this act.

SECTION 4. This act becomes effective December 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 1192
PROPOSED COMMITTEE SUBSTITUTE S1192-CSLK-23 [v.1]

6/9/2004 1:02:56 PM

Short Title: MV Transfer/Disclosure of Total Loss Claim. (Public)

Sponsors:

Referred to:

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT OF THE FRONT OF THE CERTIFICATE OF TITLE OF A MOTOR VEHICLE TO BE STAMPED WITH INFORMATION ALREADY CONTAINED ON THE REVERSE OF THE TITLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-71.3(a1) reads as rewritten:

" (a1) Any motor vehicle that is declared a total loss by an insurance company licensed and approved to conduct business in North Carolina, in addition to the designations noted in subsection (a) of this section, shall:

(1) Have the ~~title and~~ registration card marked "TOTAL LOSS CLAIM".

(2) Have a tamperproof permanent marker inserted into the doorjamb of that vehicle by the Division, at the time of the final inspection of the reconstructed vehicle, that states "TOTAL LOSS CLAIM VEHICLE". Should that vehicle be later reconstructed, repaired, or rebuilt, a permanent tamperproof marker shall be inserted in the doorjamb of the reconstructed, repaired, or rebuilt vehicle."

SECTION 2. There is appropriated from the Highway Fund to the Division of Motor Vehicles the sum of one hundred thousand dollar ($100,000) to implement the provisions of this act.

SECTION 3. This act becomes effective October 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 1192
PROPOSED COMMITTEE SUBSTITUTE S1192-PCS65459-LK-23

Short Title: MV Transfer/Disclosure of Total Loss Claim. (Public)

Sponsors:

Referred to:

May 20, 2004

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT OF THE FRONT OF THE CERTIFICATE OF TITLE OF A MOTOR VEHICLE TO BE STAMPED WITH INFORMATION ALREADY CONTAINED ON THE REVERSE OF THE TITLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-71.3(a1) reads as rewritten:

"(a1) Any motor vehicle that is declared a total loss by an insurance company licensed and approved to conduct business in North Carolina, in addition to the designations noted in subsection (a) of this section, shall:

(1) Have the ~~title and~~ registration card marked "TOTAL LOSS CLAIM".

(2) Have a tamperproof permanent marker inserted into the doorjamb of that vehicle by the Division, at the time of the final inspection of the reconstructed vehicle, that states "TOTAL LOSS CLAIM VEHICLE". Should that vehicle be later reconstructed, repaired, or rebuilt, a permanent tamperproof marker shall be inserted in the doorjamb of the reconstructed, repaired, or rebuilt vehicle."

SECTION 2. There is appropriated from the Highway Fund to the Division of Motor Vehicles the sum of one hundred thousand dollars ($100,000) to implement the provisions of this act.

SECTION 3. This act becomes effective October 1, 2004.

Senate Commerce Committee
Tuesday, June 22, 2004, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1152	Installing MV Parts and Air Bags.	Representative Cole
SB 1399	Grape Council Funds and Wine Definitions.	Senator Rand
HB 964	Furniture Requirements Contracts.	Representative Warner
HB 1463	Health Insurance Innovations Commission.	Representative Wilson Representative LaRoque Representative Church, Sr.
SB 1043	Aggregate Truck Weight Limits.	Senator Garwood
SB 1056	Monetary Compensation - Outdoor Advertising.	Senator Dalton
HB 429	Just Comp./Local Gov. Taking.	Representative Culpepper, III

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, June 22, 2004 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, June 22, 2004, in Room 1027 of the Legislative Building. Twenty-two members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced the pages: Brad McNeill, Leah Kramer and Anthony Wayne from Whiteville; and Alex Leatherman from Raleigh. All were sponsored by Senator Soles.

Senator Soles began the meeting by explaining that there is a proposed committee substitute for HB 1152, Installing MV Parts & Air Bags. It contains the same language as the committee substitute for SB 1192, MV Transfer/Disclosure of Total Loss Claim, passed by the committee at the June 15 meeting with the exception of the appropriation. Senator David Hoyle moved to adopt the committee substitute for discussion purposes. The motion carried. Senator Robert Rucho moved an unfavorable report as to the House Committee Substitute, but favorable report of the Senate Committee Substitute. The motion carried.

Senator Soles introduced Senator Hoyle to explain HB 1463, Health Insurance Innovations Commission. Senator Hoyle moved the adoption of a proposed committee substitute for discussion purposes. The motion carried. He explained that the language of the committee substitute is the same as in SB 1223, Health Insurance Innovations Commission, to which the committee gave a favorable report at its June 8 meeting. Senator Virginia Foxx moved an unfavorable report as to the House bill, but favorable report of the Senate Committee Substitute. The motion carried.

Senator Soles introduced Senator Phil Berger to explain HB 964, Furniture Requirements Contracts. Senator Kay Hagan moved the adoption of a proposed committee substitute for purposes of discussion. The motion carried. Some senators asked if other products could be added to the bill. After some discussion, Senator Soles suggested the committee substitute be voted on and he would hold on reporting the bill until the senators interested in expanding the types of products came to an agreement. Senator Larry Shaw moved an unfavorable report as to the House bill, but favorable report of the Senate Committee Substitute. The motion carried.

Senator Soles recognized a delegation of mayors from Bulgaria who were in attendance at the meeting. Mr. Mirev, Chair of the Association of Municipalities of Bulgaria, spoke and brought greetings from the Association and thanked the committee for allowing them to attend the committee meeting.

Senator Soles introduced Senator John Garwood to explain SB 1043, Aggregate Truck Weight Limits. Senator Foxx proposed an amendment to the bill and moved its adoption. Senator Soles displaced the bill until the end of the meeting.

Senator Soles introduced Senator Walter Dalton to explain HB 429, Just Comp./Local Gov. Taking, which was identical to SB 1056, Monetary Compensation-Outdoor Advertising. Senator Purcell moved adoption of a Proposed Committee Substitute for purposes of discussion. The motion carried. Senator Kay Hagan sent forth an amendment and moved the adoption of

Amendment #1 (attached). Mr. Ellis Hankins, representing the League of Municipalities, spoke in support of the amendment. The motion failed. Senator Linda Garrou sent forth an amendment and moved the adoption of Amendment #2 (attached). The motion failed. Senator Katie Dorsett sent forth an amendment and moved the adoption of Amendment #3 (attached). The motion failed. Senator Soles recognized several people from the audience to speak on the bill:

- Mr. Ellis Hankins, League of Municipalities, spoke in opposition to the bill
- Mr. Charles Floyd, speaking on his own behalf, spoke in opposition to the bill
- Mr. Myron Howard, Preservation NC, spoke in opposition to the bill
- Mr. Ben Hitchings, NC American Planning Association, spoke in opposition to the bill
- Mr. Dave Crawford, American Institute of Architects, spoke in opposition to the bill
- Ms. Linda Mills, City Attorney for Greensboro, spoke in opposition to the bill
- Mr. David Knight, Sierra Club, spoke in opposition to the bill
- Mr. Jim Blackburn, Association of County Commissioners, spoke in opposition to the bill
- Ms. Lois Nixon, Scenic NC, spoke in opposition to the bill
- Mr. Tony Adams, Outdoor Advertising, spoke in favor of the bill, saying he represented the thoughts of associations of realtors, homebuilders, restaurants, hotels and motels

Senator Hoyle moved an unfavorable report as to the House Committee Substitute bill, but favorable report of the Senate Committee Substitute. The motion carried.

Due to the lateness of the hour, Senator Soles announced that further consideration of SB 1043 would be taken up at a special meeting when a proposed committee substitute would be available.

The meeting adjourned at 12:25 p.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, June 22, 2004

Senator SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **429** Just Comp./Local Gov. Taking.

Draft Number:	PCS 70479
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Wednesday, June 23, 2004

Senator SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **1463** Health Insurance Innovations Commission.

Draft Number:	PCS 50430
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **1152** Installing MV Parts and Air Bags.

Draft Number:	PCS 60513
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

CORRECTED REPORT

Thursday, June 24, 2004

Senator SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1043** Aggregate Truck Weight Limits.

Draft Number:	PCS 65464
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **964** Furniture Requirements Contracts.

Draft Number:	PCS 70481
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1152

Committee Substitute Favorable 5/1/03

Short Title: Installing MV Parts and Air Bags. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT PROHIBITING AN INSURER FROM AUTHORIZING OR REQUIRING THE USE OF NONORIGINAL CRASH REPAIR PARTS FOR MOTOR VEHICLE REPAIRS WITHOUT CONSENT FROM THE INSURED OR CLAIMANT AND PROHIBITING THE NONREPLACEMENT OF AIR BAGS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-90. Use of nonoriginal crash repair parts.**

(a) As used in this section, the following definitions apply:

(1) 'Insurer' includes any person authorized to represent an insurer with respect to a claim.

(2) 'Nonoriginal crash repair part' means a part for a motor vehicle made or remanufactured by a company other than the original manufacturer or a licensed affiliate and is limited only to the following: metal, fiberglass, or plastic motor vehicle crash repair parts; hood; fender; radiator support; cowl panel; doors; roof; rocker panel; quarter panel; trunk lid; and auto glass including windshields.

(b) An insurer may not authorize or require the installation of a nonoriginal crash repair part on a motor vehicle without first obtaining the written consent of the insured or other claimant. The consent shall be verified by the insured's or other claimant's signature on the repair estimate, appraisal, or work order.

(c) An insurer shall provide written notice to the insured or claimant that a nonoriginal crash repair part or auto glass has been installed.

(d) It is insurance fraud for any installer, motor vehicle repair service, or parts person to install a nonoriginal crash repair part on a motor vehicle and submit a charge or invoice for an original repair part.

(e) Any insurer or other person who has reason to believe that a violation of this section has occurred shall report the violation to the Commissioner for further action pursuant to G.S. 58-2-160.

(f) A violation of the provisions of this section is punishable by a fine of five thousand dollars ($5,000) per offense."

SECTION 2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-136.2. Air bag installation.**

(a) It shall be unlawful for any person, firm, or corporation to knowingly install or reinstall as part of the vehicle inflation restraints system any object in lieu of an air bag that was designed in accordance with federal safety regulations for the make, model, and model year of the motor vehicle.

(b) Any person, firm, or corporation violating this section shall be guilty of a Class 1 misdemeanor."

SECTION 3. This act becomes effective December 1, 2003, and applies to offenses committed on or after that date.

HOUSE BILL 1152:
Clarify Disclosure for Motor Vehicle Total Loss Claim.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Cole
Date:	June 22, 2004	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute H1152-CSRU-56 [v.1]		

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 1152 would eliminate the requirement that an insurance total loss claim designation appear on a motor vehicle title in addition to the registration card and on the motor vehicle's door jam.***

CURRENT LAW: Currently a motor vehicle being retitled that has been declared a total loss by an insurance company in satisfaction of motor vehicle damage claim has to be designated as a "Total Loss Claim Vehicle" in addition to being designated as either a "Salvage Motor Vehicle", "Salvage Rebuilt Vehicle", "Reconstructed Vehicle", "Flood Vehicle" or "Non-USA Vehicle". Under current law the "Total Loss Claim" designation has to be marked on the motor vehicle title and registration card and permanently marked in the motor vehicle's doorjamb.

G.S. 20-4.01(33) defines these terms as follows:

Flood Vehicle. – A motor vehicle that has been submerged or partially submerged in water to the extent that damage to the body, engine, transmission, or differential has occurred.

Non-U.S.A. Vehicle. – A motor vehicle manufactured outside of the United States and not intended by the manufacturer for sale in the United States.

Reconstructed Vehicle. – A motor vehicle of a type required to be registered hereunder that has been materially altered from original construction due to removal, addition or substitution of new or used essential parts; and includes glider kits and custom assembled vehicles.

Salvage Motor Vehicle. – Any motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs to the vehicle and rendering the vehicle safe for use on the public streets and highways would exceed seventy-five percent (75%) of its fair retail market value, whether or not the motor vehicle has been declared a total loss by an insurer. Repairs shall include the cost of parts and labor. Fair market retail values shall be as found in the NADA Pricing Guide Book or other publications approved by the Commissioner.

Salvage Rebuilt Vehicle. – A salvage vehicle that has been rebuilt for title and registration.

Junk Vehicle. – A motor vehicle which is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap, and shall not be titled or registered.

BILL ANALYSIS: The Proposed Senate Committee Substitute for House Bill 1152 would eliminate the requirement that the designation "Total Loss Claim" be included on the motor vehicle title. The designation would continue to have to be marked on the motor vehicle registration card and permanently marked in the motor vehicle doorjamb. Also the motor vehicle title would continue to show the appropriate vehicle type designation as either a flood, non-USA, reconstructed, salvage motor or salvage rebuilt vehicle.

EFFECTIVE DATE: The bill would become effective October 1, 2004.

H1152-SMRU-V2-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1152

Committee Substitute Favorable 5/1/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H1152-CSRU-56 [v.1]

6/16/2004 10:44:57 AM

Short Title: Clarify Disclosure MV Total Loss Claim. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY DISCLOSURE OF MOTOR VEHICLE TOTAL LOSS CLAIMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-71.3(a1) reads as rewritten:

"(a1) Any motor vehicle that is declared a total loss by an insurance company licensed and approved to conduct business in North Carolina, in addition to the designations noted in subsection (a) of this section, shall:

(1) Have the ~~title and~~ registration card marked "TOTAL LOSS CLAIM".

(2) Have a tamperproof permanent marker inserted into the doorjamb of that vehicle by the Division, at the time of the final inspection of the reconstructed vehicle, that states "TOTAL LOSS CLAIM VEHICLE". Should that vehicle be later reconstructed, repaired, or rebuilt, a permanent tamperproof marker shall be inserted in the doorjamb of the reconstructed, repaired, or rebuilt vehicle."

SECTION 2. This act becomes effective October 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1152

Committee Substitute Favorable 5/1/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H1152-PCS60513-RU-56

Short Title: Clarify Disclosure MV Total Loss Claim. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY DISCLOSURE OF MOTOR VEHICLE TOTAL LOSS CLAIMS.

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SECTION 2. This act becomes effective October 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1463*
Second Edition Engrossed 6/10/04

Short Title:	Health Insurance Innovations Commission.	(Public)
Sponsors:	Representatives C. Wilson, LaRoque, Church (Primary Sponsors); Allred, Bordsen, Daughtridge, Decker, Jones, Warner, Barnhart, Glazier, Gorman, and Steen.	
Referred to:	Insurance.	

May 17, 2004

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE INNOVATIONS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Findings and Purpose. – The General Assembly finds that a crisis exists in the availability and affordability of adequate health insurance coverage for small business owners and employees in this State. These findings indicate that greater than fifty percent (50%) of the statewide workforce is employed by small business, that there are 1,154,000 North Carolinians who are not covered by health insurance, and that more than sixty percent (60%) of these citizens either own or work for a small business, or are the dependent of a small business owner or employee. The findings further indicate that 16 health insurance carriers left the North Carolina small group health coverage market in 2001, an all-time high, that virtually no small group health insurance carriers have entered the North Carolina market in the last two years, and that dramatic increases in premium rates is the primary reason for the alarming decrease in availability of health insurance coverage for small business. The purpose of this act is to quickly and effectively address this crisis through the collaborative efforts of persons involved in and affected by the declining availability of health insurance for the State's small employer workforce. It is the intent of the General Assembly to achieve this purpose through the establishment of the North Carolina Health Insurance Innovations Commission in accordance with this act.

SECTION 2. Commission Established. – There is established the North Carolina Health Insurance Innovations Commission. The Commission shall consist of 24 members, appointed as follows:

(1) Thirteen members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. Upon appointment, The Speaker shall designate a cochair.

(2) Thirteen members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate. Upon appointment, the President Pro Tempore shall designate a cochair.

The appointing authorities shall ensure that members of the Commission are representative of the following: three who represent health insurers, three physicians licensed to practice in this State, three who represent hospitals located in this State, two who represent businesses with fewer than 50 fifty employees, two who represent businesses with 50 fifty employees or more, two persons without health insurance or who advocate for the uninsured, one who represents insurance brokers or agents, and one who represents health researchers and policy experts. The appointing authorities shall also ensure that appointments reflect representation among the regions of the State.

SECTION 3.(a) Commission Duties and Responsibilities. – The Commission shall do the following:

(1) Adopt procedures and implement other administrative requirements necessary to carry out its duties under this act.

(2) Identify and evaluate comprehensively the problems small employers face when they attempt to obtain health insurance coverage for themselves and their employees, and consider the impact these problems have for large employees and the communities they serve.

(3) Initiate regional demonstration projects to pilot innovative health care plans and products to address the problems identified. Innovative products may include piloted community education programs targeted at top illnesses in an effort to increase early detection of these illnesses. Innovative plans may also include piloted programs targeted at increasing the demand for health insurance coverage by both employers and employees through the use of policy incentives. Innovative plans and products are subject to the approval of the Commissioner of Insurance as provided in Section 5 of this act.

(4) Develop clear and substantive recommendations for actions that must be taken by health insurance carriers, health care providers, government, small business employers, large business employers, consumers and consumer groups, in order to improve the availability and affordability of small employer health insurance coverage within the next three years.

(5) Provide a report on the Commission's activities to the 2005 General Assembly, Regular Session 2006, upon its convening. Reports to the General Assembly shall include proposed legislation necessary to carry out the purposes of this act.

SECTION 3.(b) The Commission shall consider the following issues and strategies in developing regional demonstration projects and other approaches to address the rising cost of health care:

(1) Feasibility of establishing chronic disease management programs similar to those that are working successfully in this State and other states.

(2) The cost-effectiveness of existing and proposed health insurance coverage mandates.
(3) Promoting collaboration among providers, insurers, government agencies, and consumers to improve health care affordability.
(4) Promoting consumer education about available insurance products and promoting education of small business owners about the available insurance products, available services to assist them in understanding and selecting appropriate insurance plans, and current small business tax benefits regarding health insurance deductions.
(5) Review and evaluate "consumer driven" benefit plans.
(6) Increasing efforts and resources to educate and motivate consumers to use health care resources appropriately.
(7) Rewarding technological innovation based in quality and evidence-based outcomes that provide increased value to consumers over existing treatments.
(8) Encourage case management of high utilizers.
(9) Promoting evidence-based medicine.

SECTION 4. Meetings; Staff; Funding. – Members shall serve an initial two-year term and may be reappointed for an additional two-year term. The Commission shall secure federal or private funds to conduct meetings, hire professional staff, support demonstration plans and products, and cover any other costs incurred by the Commission in carrying out its duties under this act. The Department of Insurance shall, at the request of the Commission, provide technical assistance in the preparation of grant proposals for federal and other non-State funding to support the work of the Commission, in the preparation of forms, and in other related matters. The Commission may meet in the Legislative Building or the Legislative Office Building, as approved by the Legislative Services Commission, or at any other location deemed appropriate by the Health Insurance Innovations Commission. The Commission may enter into agreements and allocate federal or private funds obtained by the Commission with the University of North Carolina at Charlotte and other public or private entities to provide meeting space, professional services and support staff, and other services necessary for the Commission to carry out its duties and responsibilities under this act.

SECTION 5. Waiver of Rules. – The Commissioner of Insurance shall review all pilot programs and innovative plans and products proposed by the North Carolina Health Insurance Innovations Commission. If the Commissioner determines that the proposed programs, plans, or products are in the interest of the citizens of this State and are not contrary to the public policy of this State, then the Commissioner may approve them. If the approved programs, plans, or products are in conflict with or contrary to rules adopted by the Commissioner, the Commissioner may waive the rules adopted by the Commissioner to allow implementation of the programs, plans, or products. Waivers granted by the Commissioner under this section shall expire three years from the date the waiver is granted or December 31, 2008, whichever occurs first.

SECTION 6. Funds obtained by the North Carolina Health Innovations Commission for operations and programs of the Commission shall be deposited with the

State Treasurer for credit to the Legislative Services Office. The Legislative Services Office shall allocate these funds for reimbursement to the Commission for operation and program costs incurred.

SECTION 7. Nothing in this act obligates the General Assembly to appropriate funds to implement this act. This act becomes effective July 1, 2004.

HOUSE BILL 1463:
Health Insurance Innovations Commission

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	
Date:	June 22, 2004	**Summary by:**	Tim Hovis
Version:	Proposed Committee Substitute H1463-CSRG-35 [v.1]		Committee Counsel

SUMMARY: ***HB 1463 establishes the North Carolina Health Insurance Innovations Commission to study the problems small employers face when seeking health insurance coverage for themselves and their employees, to initiate programs to pilot innovative health care plans and products, and to develop recommendations for insurance providers, health care providers, government, business employers, consumers, and consumer groups to improve the availability and affordability of small employer health insurance within the next three years.***

BACKGROUND:

Over 50% of North Carolina's workforce is employed by small business employers. More than 60% North Carolina's 1,154,000 uninsured either own or work for a small business. In 2001, sixteen health insurance carriers left the North Carolina small group market and no new small group health insurance carriers have entered the market for the past two years. Dramatic increases in premium rates are the primary reason for the decrease in availability of health insurance coverage for small businesses.

The House Select Committee on the Rising Cost of Health Care recommended a bill similar to HB 1463. The Committee recommendation resulted in part from a presentation by Ches Gwinn of the Metrolina Health Initiative (MHI) in Charlotte, NC. Mr. Gwinn described MHI, which takes on partnership approach toward lowering health care costs and improving the ability of small employers to afford health insurance for their employees. He recommended a commission that would seek to improve access to insurance for small businesses and reduce the volume of the most frequent and high cost illnesses. Toward that end he recommended forming a state commission like the one set up in HB 1463.

BILL ANALYSIS: **Section 1** of the bill sets out the findings and purpose for the bill.

Section 2 of the bill establishes the North Carolina Health Insurance Innovations Commission.

Section 3. (a) of the bill identifies Commission member duties and responsibilities.

Section 3. b) of the bill directs the Commission to consider certain issues and strategies in developing regional demonstration projects and other attempts to address the rising cost of health care. These issues and strategies include chronic disease management programs, health insurance mandates, collaboration among providers, insurance companies and consumers, consumer education, "consumer driven" benefit plans, technological innovation, case management for high utilizers, and the use of promoting evidence-based medicine.

Section 4 of the bill establishes two year terms for Commission members. The Commission shall secure federal or private funds to support the work of the Commission. The Department of Insurance shall provide technical assistance to the Commission to seek grants for federal and other non-State funding.

Section 5 of the bill directs the Commissioner of Insurance to review all pilot programs, plans, and products proposed by the Commission. The Commissioner may approve programs, plans, and products if they are of interest to the citizens of NC and not contrary to public policy. If approved programs, plans, or products conflict with DOI rules, the Commissioner may adopt temporary rules to allow implementation of the program, plan, or product. Any new program, plan, or product must be reported to the Joint Legislative Commission on Governmental Operations 30 days prior to its implementation.

Section 6 of the bill directs the Commission to deposit funds obtained by the Commission for operations and programs with the State Treasurer for credit to the Legislative Services Office. The Legislative Services Office shall allocate these funds for reimbursement to the Commission for operations and program costs.

Section 7 of the bill states that the General Assembly is not obligated to appropriate funds to implement the bill and that the bill becomes effective July 1, 2004

Effective Date: The bill becomes effective July 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1463*
Second Edition Engrossed 6/10/04
PROPOSED SENATE COMMITTEE SUBSTITUTE H1463-CSRG-35 [v.1]

6/21/2004 4:20:20 PM

Short Title: Health Insurance Innovations Commission. (Public)

Sponsors:

Referred to:

May 17, 2004

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE INNOVATIONS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Findings and Purpose. – The General Assembly finds that a crisis exists in the availability and affordability of adequate health insurance coverage for small business owners and employees in this State. These findings indicate that greater than fifty percent (50%) of the statewide workforce is employed by small business, that there are 1,154,000 North Carolinians who are not covered by health insurance, and that more than sixty percent (60%) of these citizens either own or work for a small business, or are the dependent of a small business owner or employee. The findings further indicate that 16 health insurance carriers left the North Carolina small group health coverage market in 2001, an all-time high, that virtually no small group health insurance carriers have entered the North Carolina market in the last two years, and that dramatic increases in premium rates is the primary reason for the alarming decrease in availability of health insurance coverage for small business. The purpose of this act is to quickly and effectively address this crisis through the collaborative efforts of persons involved in and affected by the declining availability of health insurance for the State's small employer workforce. It is the intent of the General Assembly to achieve this purpose through the establishment of the North Carolina Health Insurance Innovations Commission in accordance with this act.

SECTION 2. Commission Established. – There is established the North Carolina Health Insurance Innovations Commission. The Commission shall consist of 26 members, appointed as follows:

(1) Thirteen members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. Upon appointment, the Speaker shall designate a cochair.

(2) Thirteen members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate. Upon appointment, the President Pro Tempore shall designate a cochair.

The appointing authorities shall ensure that members of the Commission are representative of the following: three who represent health insurers, three physicians licensed to practice in this State, three who represent hospitals located in this State, two who represent businesses with fewer than 50 employees, two who represent businesses with 50 employees or more, two persons without health insurance or who advocate for the uninsured, one who represents insurance brokers or agents, and one who represents health researchers and policy experts. The appointing authorities shall also ensure that appointments reflect representation among the regions of the State.

SECTION 3.(a) Commission Duties and Responsibilities. – The Commission shall do the following:

(1) Adopt procedures and implement other administrative requirements necessary to carry out its duties under this act.

(2) Identify and evaluate comprehensively the problems small employers face when they attempt to obtain health insurance coverage for themselves and their employees, and consider the impact these problems have for large employees and the communities they serve.

(3) Initiate regional demonstration projects to pilot innovative health care plans and products to address the problems identified. Innovative products may include piloted community education programs targeted at top illnesses in an effort to increase early detection of these illnesses. Innovative plans may also include piloted programs targeted at increasing the demand for health insurance coverage by both employers and employees through the use of policy incentives. Innovative plans and products are subject to the approval of the Commissioner of Insurance as provided in Section 5 of this act.

(4) Develop clear and substantive recommendations for actions that must be taken by health insurance carriers, health care providers, government, small business employers, large business employers, consumers and consumer groups, in order to improve the availability and affordability of small employer health insurance coverage within the next three years.

(5) Provide a report on the Commission's activities to the 2005 General Assembly, Regular Session 2006, upon its convening. Reports to the General Assembly shall include proposed legislation necessary to carry out the purposes of this act.

SECTION 3.(b) The Commission shall consider the following issues and strategies in developing regional demonstration projects and other approaches to address the rising cost of health care:

(1) Feasibility of establishing chronic disease management programs similar to those that are working successfully in this State and other states.

(2) The cost-effectiveness of existing and proposed health insurance coverage mandates.
(3) Promoting collaboration among providers, insurers, government agencies, and consumers to improve health care affordability.
(4) Promoting consumer education about available insurance products and promoting education of small business owners about the available insurance products, available services to assist them in understanding and selecting appropriate insurance plans, and current small business tax benefits regarding health insurance deductions.
(5) Review and evaluate "consumer driven" benefit plans.
(6) Increasing efforts and resources to educate and motivate consumers to use health care resources appropriately.
(7) Rewarding technological innovation based in quality and evidence-based outcomes that provide increased value to consumers over existing treatments.
(8) Encourage case management of high utilizers.
(9) Promoting evidence-based medicine.

SECTION 4. Meetings; Staff; Funding. – Members shall serve an initial two-year term and may be reappointed for an additional two-year term. The Commission shall secure federal or private funds to conduct meetings, hire professional staff, support demonstration plans and products, and cover any other costs incurred by the Commission in carrying out its duties under this act. The Department of Insurance shall, at the request of the Commission, provide technical assistance in the preparation of grant proposals for federal and other non-State funding to support the work of the Commission, in the preparation of forms, and in other related matters. The Commission may meet in the Legislative Building or the Legislative Office Building, as approved by the Legislative Services Commission, or at any other location deemed appropriate by the Health Insurance Innovations Commission. The Commission may enter into agreements and allocate federal or private funds obtained by the Commission with the University of North Carolina at Charlotte and other public or private entities to provide meeting space, professional services and support staff, and other services necessary for the Commission to carry out its duties and responsibilities under this act.

SECTION 5. Temporary Rules. – The Commissioner of Insurance shall review all pilot programs and innovative plans and products proposed by the North Carolina Health Insurance Innovations Commission. If the Commissioner determines that the proposed programs, plans, or products are in the interest of the citizens of this State and are not contrary to the public policy of this State, then the Commissioner may approve them. If the approved programs, plans, or products are in conflict with or contrary to rules adopted by the Commissioner, the Commissioner may adopt temporary rules to allow implementation of the programs, plans, or products. Any new program, plan, or product shall be reported to the Joint Legislative Commission on Governmental Operations 30 days prior to its implementation. Nothing herein shall be deemed to increase the power of the Commissioner as otherwise authorized by law.

SECTION 6. Funds obtained by the North Carolina Health Innovations Commission for operations and programs of the Commission shall be deposited with the State Treasurer for credit to the Legislative Services Office. The Legislative Services Office shall allocate these funds for reimbursement to the Commission for operation and program costs incurred.

SECTION 7. Nothing in this act obligates the General Assembly to appropriate funds to implement this act. This act becomes effective July 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1463*

Second Edition Engrossed 6/10/04

PROPOSED SENATE COMMITTEE SUBSTITUTE H1463-PCS50430-RG-35

Short Title: Health Insurance Innovations Commission. (Public)

Sponsors:

Referred to:

May 17, 2004

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE INNOVATIONS COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Findings and Purpose. – The General Assembly finds that a crisis exists in the availability and affordability of adequate health insurance coverage for small business owners and employees in this State. These findings indicate that greater than fifty percent (50%) of the statewide workforce is employed by small business, that there are 1,154,000 North Carolinians who are not covered by health insurance, and that more than sixty percent (60%) of these citizens either own or work for a small business, or are the dependent of a small business owner or employee. The findings further indicate that 16 health insurance carriers left the North Carolina small group health coverage market in 2001, an all-time high, that virtually no small group health insurance carriers have entered the North Carolina market in the last two years, and that dramatic increases in premium rates are the primary reason for the alarming decrease in availability of health insurance coverage for small business. The purpose of this act is to quickly and effectively address this crisis through the collaborative efforts of persons involved in and affected by the declining availability of health insurance for the State's small employer workforce. It is the intent of the General Assembly to achieve this purpose through the establishment of the North Carolina Health Insurance Innovations Commission in accordance with this act.

SECTION 2. Commission Established. – There is established the North Carolina Health Insurance Innovations Commission. The Commission shall consist of 26 members, appointed as follows:

(1) Thirteen members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. Upon appointment, the Speaker shall designate a cochair.

(2) Thirteen members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate. Upon appointment, the President Pro Tempore shall designate a cochair.

The appointing authorities shall ensure that members of the Commission are representative of the following: three who represent health insurers, three physicians licensed to practice in this State, three who represent hospitals located in this State, two who represent businesses with fewer than 50 employees, two who represent businesses with 50 employees or more, two persons without health insurance or who advocate for the uninsured, one who represents insurance brokers or agents, and one who represents health researchers and policy experts. The appointing authorities shall also ensure that appointments reflect representation among the regions of the State.

SECTION 3.(a) Commission Duties and Responsibilities. – The Commission shall do the following:

(1) Adopt procedures and implement other administrative requirements necessary to carry out its duties under this act.

(2) Identify and evaluate comprehensively the problems small employers face when they attempt to obtain health insurance coverage for themselves and their employees and consider the impact these problems have for large employees and the communities they serve.

(3) Initiate regional demonstration projects to pilot innovative health care plans and products to address the problems identified. Innovative products may include piloted community education programs targeted at top illnesses in an effort to increase early detection of these illnesses. Innovative plans may also include piloted programs targeted at increasing the demand for health insurance coverage by both employers and employees through the use of policy incentives. Innovative plans and products are subject to the approval of the Commissioner of Insurance as provided in Section 5 of this act.

(4) Develop clear and substantive recommendations for actions that must be taken by health insurance carriers, health care providers, government, small business employers, large business employers, consumers, and consumer groups, in order to improve the availability and affordability of small employer health insurance coverage within the next three years.

(5) Provide a report on the Commission's activities to the 2005 General Assembly, Regular Session 2006, upon its convening. Reports to the General Assembly shall include proposed legislation necessary to carry out the purposes of this act.

SECTION 3.(b) The Commission shall consider the following issues and strategies in developing regional demonstration projects and other approaches to address the rising cost of health care:

(1) Feasibility of establishing chronic disease management programs similar to those that are working successfully in this State and other states.

(2) The cost-effectiveness of existing and proposed health insurance coverage mandates.
(3) Promoting collaboration among providers, insurers, government agencies, and consumers to improve health care affordability.
(4) Promoting consumer education about available insurance products and promoting education of small business owners about the available insurance products, available services to assist them in understanding and selecting appropriate insurance plans, and current small business tax benefits regarding health insurance deductions.
(5) Review and evaluate "consumer driven" benefit plans.
(6) Increasing efforts and resources to educate and motivate consumers to use health care resources appropriately.
(7) Rewarding technological innovation based in quality and evidence-based outcomes that provide increased value to consumers over existing treatments.
(8) Encourage case management of high utilizers.
(9) Promoting evidence-based medicine.

SECTION 4. Meetings; Staff; Funding. – Members shall serve an initial two-year term and may be reappointed for an additional two-year term. The Commission shall secure federal or private funds to conduct meetings, hire professional staff, support demonstration plans and products, and cover any other costs incurred by the Commission in carrying out its duties under this act. The Department of Insurance shall, at the request of the Commission, provide technical assistance in the preparation of grant proposals for federal and other non-State funding to support the work of the Commission, in the preparation of forms, and in other related matters. The Commission may meet in the Legislative Building or the Legislative Office Building, as approved by the Legislative Services Commission, or at any other location deemed appropriate by the Health Insurance Innovations Commission. The Commission may enter into agreements and allocate federal or private funds obtained by the Commission with the University of North Carolina at Charlotte and other public or private entities to provide meeting space, professional services and support staff, and other services necessary for the Commission to carry out its duties and responsibilities under this act.

SECTION 5. Temporary Rules. – The Commissioner of Insurance shall review all pilot programs and innovative plans and products proposed by the North Carolina Health Insurance Innovations Commission. If the Commissioner determines that the proposed programs, plans, or products are in the interest of the citizens of this State and are not contrary to the public policy of this State, then the Commissioner may approve them. If the approved programs, plans, or products are in conflict with or contrary to rules adopted by the Commissioner, the Commissioner may adopt temporary rules to allow implementation of the programs, plans, or products. Any new program, plan, or product shall be reported to the Joint Legislative Commission on Governmental Operations 30 days prior to its implementation. Nothing herein shall be deemed to increase the power of the Commissioner as otherwise authorized by law.

SECTION 6. Funds obtained by the North Carolina Health Innovations Commission for operations and programs of the Commission shall be deposited with the State Treasurer for credit to the Legislative Services Office. The Legislative Services Office shall allocate these funds for reimbursement to the Commission for operation and program costs incurred.

SECTION 7. Nothing in this act obligates the General Assembly to appropriate funds to implement this act. This act becomes effective July 1, 2004.

HOUSE BILL 964

Short Title:	Furniture Requirements Contracts.	(Public)
Sponsors:	Representatives Warner; Goforth and Decker.	
Referred to:	State Government.	

April 9, 2003

A BILL TO BE ENTITLED

AN ACT ELIMINATING THE REQUIREMENT THAT THE STATE PURCHASING OFFICER DETERMINE WHETHER THREE QUALIFIED VENDORS ARE AVAILABLE IN FURNITURE REQUIREMENTS CONTRACTS AND CLARIFYING THE TERM QUALIFIED VENDOR IN SUCH CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-57.1 reads as rewritten:

"**§ 143-57.1. Furniture requirements contracts.**

(a) To ensure agencies access to sufficient sources of furniture supply and service, to provide agencies the necessary flexibility to obtain furniture that is compatible with interior architectural design and needs, to provide small and disadvantaged businesses additional opportunities to participate on State requirements contracts, and to restore the traditional use of multiple award contracts for purchasing furniture requirements, each State furniture requirements contract shall be awarded on a multiple award basis, subject to the following conditions:

(1) Competitive, sealed bids must be solicited for the contract in accordance with Article 3 of Chapter 143 of the General Statutes unless otherwise provided for by the State Purchasing Officer pursuant to that Article.

(2) Subject to the provisions of this section, bids shall be evaluated and the contract awarded in accordance with Article 3 of Chapter 143 of the General Statutes.

(3) For each category of goods under each State requirements furniture contract, awards shall be made to at least three qualified vendors unless ~~the State Purchasing Officer determines that three qualified vendors are not available or that it is in the best interest of the State to make fewer awards. The State Purchasing Officer, subject to the approval of the Board of Award, shall state his reasons in writing for making fewer awards and the written documentation shall be~~

~~maintained as part of the bid file and subject to public inspection.~~three such vendors are not available. A vendor is qualified under this section if the vendor's products conform to the term contract specifications and the vendor is listed on the State's qualified products list.

(4) An agency may purchase from any vendor certified on the contract but shall make the most economical purchase that it determines meets its needs, based upon price, compatibility, service, delivery, freight charges, and other factors that it considers relevant.

(b) For purposes of this section, "furniture requirements contract" means State requirements contracts for casegoods, classroom furniture, bookcases, ergonomic chairs, office swivel and side chairs, computer furniture, mobile and folding furniture, upholstered seating, commercial dining tables, and related items."

SECTION 2. This act is effective when it becomes law.

HOUSE BILL 964:
Furniture Requirements Contracts

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Representative Warner
Date:	June 22, 2004	**Summary by:**	O. Walker Reagan, Committee Co-Counsel
Version:	Proposed Committee Substitute H964-CSRU-57		

SUMMARY: ***The Proposed Senate Committee Substitute for House Bill 946 would amend the law for awarding State furniture contracts to provide that every State furniture contract be bid based on the specific contract items being sought and not on a single representative item within the class, that the contract be awarded to at least three qualified bidders unless three qualified vendors are not available, and that the number of contracts awarded be expanded up to as many as six if necessary to include a North Carolina company.***

CURRENT LAW: Article 3 of Chapter 143 charges the Secretary of Administration (Secretary) with the responsibility of entering into term contracts for furniture. All State agencies, the public schools and community colleges are required to purchase furniture from vendors who have been awarded State term contract for a particular item. Units of local government may, but are not required to purchase from these term contracts.

G.S. 143-57.1 applies specifically to State "furniture requirements contracts" defined as a contract for casegoods, classroom furniture, bookcases, ergonomic chairs, office swivel and side chairs, computer furniture, mobile and folding furniture, upholstered seating, commercial dining tables and related items. G.S. 143-57.1(a) provides that each State furniture requirements contract shall be awarded on a multiple award basis subject to the normal competitive sealed bids process and the evaluation and awarding of contracts under the standard State contracting procedure. But furniture contracts awards must be made to at least three qualified vendors unless three qualified vendors are not available, or the State Purchasing Officer determines it is in the best interests of the State to make fewer awards. The Board of Award must approve this decision and the Officer must state the reasons for making fewer than three awards.

An agency may purchase from any vendor certified on a particular contract, but must make the most economical purchase that meets the agency's needs.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 964 would make the following changes to the requirements for furniture contract awards:

- Require that bids solicited for furniture contracts be based on a historical weighted average of specific contract items and not on a single item within a class of items.
- Remove the authority of the State Purchasing Officer to determine that it is in the best interest of the State to award a furniture requirements contract to less than three qualified vendors and only allow awarding these contracts to fewer than three vendors when less than three qualified vendors were available. A qualified vendor is defined as a vendor whose products conform to the term contract specifications, the vendor is listed on the State's qualified products list and the vendor submits a responsive bid.
- Require that contracts be awarded to more than three qualified vendors if expanding the number of contracts up to six is necessary to include a North Carolina manufacturer or company.

EFFECTIVE DATE: The bill becomes effective July 1, 2004 and applies to contracts bid on or after that date.

This summary was contributed to by Kory Goldsmith as Counsel to the House State Government Committee.

H964-SMRU-V2-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 964
PROPOSED SENATE COMMITTEE SUBSTITUTE H964-CSRU-57 [v.4]

6/21/2004 5:49:15 PM

Short Title: Furniture Requirements Contracts. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING FURNITURE REQUIREMENT CONTRACTS FOR STATE AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-57.1 reads as rewritten:

"**§ 143-57.1. Furniture requirements contracts.**

(a) To ensure agencies access to sufficient sources of furniture supply and service, to provide agencies the necessary flexibility to obtain furniture that is compatible with interior architectural design and needs, to provide small and disadvantaged businesses additional opportunities to participate on State requirements contracts, and to restore the traditional use of multiple award contracts for purchasing furniture requirements, each State furniture requirements contract shall be awarded on a multiple award basis, subject to the following conditions:

(1) Competitive, sealed bids must be solicited for the contract in accordance with Article 3 of Chapter 143 of the General Statutes unless otherwise provided for by the State Purchasing Officer pursuant to that Article. Bids shall be solicited on a historical weighted average of specific contract items and not on a single item within a class of items. Historical weighted average shall be based information derived from the State's electronic procurement system, when available, or other available data.

(2) Subject to the provisions of this section, bids shall be evaluated and the contract awarded in accordance with Article 3 of Chapter 143 of the General Statutes.

(3) For each category of goods under each State requirements furniture contract, awards shall be made to at least three qualified vendors unless three qualified vendors are not available. Additionally, if the State Purchasing Officer determines that there are no qualified vendors

within the three best qualified vendors who offer furniture manufactured or produced in North Carolina or who are incorporated in the State, the State Purchasing Officer shall expand the number of qualified vendors awarded contracts to as many qualified vendors as is necessary to include a qualified vendor who offers furniture manufactured or produced in North Carolina or who is incorporated in the State, but the State Purchasing Officer shall not be required to expand the number of qualified vendors to more than six qualified vendors. ~~three qualified vendors are not available or that it is in the best interest of the State to make fewer awards. The State Purchasing Officer, subject to the approval of the Board of Award, shall state his reasons in writing for making fewer awards and the written documentation shall be maintained as part of the bid file and subject to public inspection.~~ A vendor is qualified under this section if the vendor's products conform to the term contract specifications, the vendor is listed on the State's qualified products list and the vendor submits a responsive bid.

(4) An agency may purchase from any vendor certified on the contract but shall make the most economical purchase that it determines meets its needs, based upon price, compatibility, service, delivery, freight charges, and other factors that it considers relevant.

(b) For purposes of this section, "furniture requirements contract" means State requirements contracts for casegoods, classroom furniture, bookcases, ergonomic chairs, office swivel and side chairs, computer furniture, mobile and folding furniture, upholstered seating, commercial dining tables, and related items."

SECTION 2. This act becomes effective July 1, 2004 and applies to contracts advertised for bid on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 964
PROPOSED SENATE COMMITTEE SUBSTITUTE H964-PCS70481-RU-57

Short Title: Furniture Requirements Contracts. (Public)

Sponsors:

Referred to:

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING FURNITURE REQUIREMENT CONTRACTS FOR STATE AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-57.1 reads as rewritten:

"**§ 143-57.1. Furniture requirements contracts.**

(a) To ensure agencies access to sufficient sources of furniture supply and service, to provide agencies the necessary flexibility to obtain furniture that is compatible with interior architectural design and needs, to provide small and disadvantaged businesses additional opportunities to participate on State requirements contracts, and to restore the traditional use of multiple award contracts for purchasing furniture requirements, each State furniture requirements contract shall be awarded on a multiple award basis, subject to the following conditions:

(1) Competitive, sealed bids must be solicited for the contract in accordance with Article 3 of Chapter 143 of the General Statutes unless otherwise provided for by the State Purchasing Officer pursuant to that Article. Bids shall be solicited on a historical weighted average of specific contract items and not on a single item within a class of items. Historical weighted average shall be based on information derived from the State's electronic procurement system, when available, or other available data.

(2) Subject to the provisions of this section, bids shall be evaluated and the contract awarded in accordance with Article 3 of Chapter 143 of the General Statutes.

(3) For each category of goods under each State requirements furniture contract, awards shall be made to at least three qualified vendors unless three qualified vendors are not available. Additionally, if the State Purchasing Officer determines that there are no qualified vendors

within the three best qualified vendors who offer furniture manufactured or produced in North Carolina or who are incorporated in the State, the State Purchasing Officer shall expand the number of qualified vendors awarded contracts to as many qualified vendors as is necessary to include a qualified vendor who offers furniture manufactured or produced in North Carolina or who is incorporated in the State, but the State Purchasing Officer shall not be required to expand the number of qualified vendors to more than six qualified vendors. ~~three qualified vendors are not available or that it is in the best interest of the State to make fewer awards. The State Purchasing Officer, subject to the approval of the Board of Award, shall state his reasons in writing for making fewer awards and the written documentation shall be maintained as part of the bid file and subject to public inspection.~~ A vendor is qualified under this section if the vendor's products conform to the term contract specifications, the vendor is listed on the State's qualified products list, and the vendor submits a responsive bid.

(4) An agency may purchase from any vendor certified on the contract but shall make the most economical purchase that it determines meets its needs, based upon price, compatibility, service, delivery, freight charges, and other factors that it considers relevant.

(b) For purposes of this section, "furniture requirements contract" means State requirements contracts for casegoods, classroom furniture, bookcases, ergonomic chairs, office swivel and side chairs, computer furniture, mobile and folding furniture, upholstered seating, commercial dining tables, and related items."

SECTION 2. This act becomes effective July 1, 2004, and applies to contracts advertised for bid on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1043

Short Title:	Aggregate Truck Weight Limits.	(Public)
Sponsors:	Senators Garwood, Jenkins; and Foxx.	
Referred to:	Commerce.	

May 11, 2004

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE WEIGHT LIMITS FOR TRUCKS TRANSPORTING AGGREGATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-118(c) is amended by adding a new subdivision to read:

"(16) Subsections (b) and (e) of this section do not apply to a dump truck or dump trailer transporting bulk aggregates, if the vehicle does not exceed the maximum gross weight allowed in subsection (b) of this section."

SECTION 2. G.S. 20-118(e) is amended by adding a new subdivision to read:

"(6) The penalty for violating the gross weight or axle-group weight by a dump truck or dump trailer vehicle transporting bulk aggregate materials intrastate from a site that does not have a certified scale for weighing the vehicle is one-half of the amount it otherwise would be under subdivision (1) of this section."

SECTION 3. G.S. 20-118 is amended by adding a new subsection to read:

"(l) The axle weight limits of this section do not apply to a dump truck or dump trailer transporting bulk aggregates on a posted bridge, if the vehicle does not exceed the posted weight for the bridge."

SECTION 4. This act is effective when it becomes law.

SENATE BILL 1043:
Aggregate Truck Weight Limits

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	
Date:	June 22, 2004	**Summary by:**	Tim Hovis
Version:	Senate Bill 1043-First Edition		Committee Counsel

SUMMARY: ***Senate Bill 1043 would amend the weight limits for dump trucks and dump trailer vehicles transporting bulk aggregates.***

CURRENT LAW: G.S. 20-118 provides that the single axle weight of a vehicle may not exceed 20,000 pounds and the tandem axle weight may not exceed 38,000 pounds. Axle-group weight limitations are governed by a chart in G.S. 20-118. A copy of the statute is attached to this summary.

Violation of the single-axle or tandem-axle weight limits is punishable by 4 cents per pound for the first 1000 pounds, 6 cents per pound for the next 1000 pounds, and 10 cents per pound for each additional pound.

BILL ANALYSIS: Senate Bill 1043 amends the weight limit laws for dump trucks and dump trailer vehicles to:

- Exempt from the axle-group weight limits dump trucks or dump trailers transporting bulk aggregates, if the vehicle does not exceed the maximum gross weight limits.
- Reduce by half the overweight penalty for violating the gross weight or axle-group penalty for dump trucks or dump trailers transporting bulk aggregates, if the vehicle is transporting aggregates intrastate from a site that does not have a certified scale.
- Exempt dump trucks or dump trailers transporting bulk aggregates from axle-weight posted limits on bridges, if the vehicle does not exceed the total posted weight for the bridge.

Effective Date: The bill is effective when it becomes law.

§ 20-118. Weight of vehicles and load.

(a) For the purposes of this section, the following definitions shall apply:

(1) Single-axle weight. – The gross weight transmitted by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(2) Tandem-axle weight. – The gross weight transmitted to the road by two or more consecutive axles whose centers may be included between parallel vertical planes spaced more than 40 inches and not more than 96 inches apart, extending across the full width of the vehicle.

(3) Axle group. – Any two or more consecutive axles on a vehicle or combination of vehicles.

(4) Gross weight. – The weight of any single axle, tandem axle, or axle group of a vehicle or combination of vehicles plus the weight of any load thereon.

(5) Light-traffic roads. – Any highway on the State Highway System, excepting routes designated I, U.S. or N.C., posted by the Department of Transportation to limit the axle weight below the statutory limits.

(b) The following weight limitations shall apply to vehicles operating on the highways of the State:

(1) The single-axle weight of a vehicle or combination of vehicles shall not exceed 20,000 pounds.

(2) The tandem-axle weight of a vehicle or combination of vehicles shall not exceed 38,000 pounds.

(3) The gross weight imposed upon the highway by any axle group of a vehicle or combination of vehicles shall not exceed the maximum weight given for the respective distance between the first and last axle of the group of axles measured longitudinally to the nearest foot as set forth in the following table:

Distance Between Axles*	Maximum Weight in Pounds for any Group of Two or More Consecutive Axles					
	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles	7 Axles
4	38000					
5	38000					
6	38000					
7	38000					
8 or less	38000	38000				
more than 8	38000	42000				
9	39000	42500				
10	40000	43500				
11		44000				
12		45000	50000			
13		45500	50500			
14		46500	51500			

15	47000	52000			
16	48000	52500	58000		
17	48500	53500	58500		
18	49500	54000	59000		
19	50000	54500	60000		
20	51000	55500	60500	66000	
21	51500	56000	61000	66500	
22	52500	56500	61500	67000	
23	53000	57500	62500	68000	
24	54000	58000	63000	68500	74000
25	54500	58500	63500	69000	74500
26	55500	59500	64000	69500	75000
27	56000	60000	65000	70000	75500
28	57000	60500	65500	71000	76500
29	57500	61500	66000	71500	77000
30	58500	62000	66500	72000	77500
31	59000	62500	67500	72500	78000
32	60000	63500	68000	73000	78500
33		64000	68500	74000	79000
34		64500	69000	74500	80000
35		65500	70000	75000	
36		66000**	70500	75500	
37		66500**	71000	76000	
38		67500**	72000	77000	
39		68000	72500	77500	
40		68500	73000	78000	
41		69500	73500	78500	
42		70000	74000	79000	
43		70500	75000	80000	
44		71500	75500		
45		72000	76000		
46		72500	76500		
47		73500	77500		
48		74000	78000		
49		74500	78500		
50		75500	79000		
51		76000	80000		
52		76500			
53		77500			
54		78000			
55		78500			
56		79500			
57		80000			

* Distance in Feet Between the Extremes of any Group of Two or More Consecutive Axles.

** See exception in G.S. 20-118(c)(1).

(4) The Department of Transportation may establish light-traffic roads and further restrict the axle weight limit on such light-traffic roads lower than the statutory limits. The Department of Transportation shall have authority to designate any highway on the State Highway System, excluding routes designated by I, U.S. and N.C., as a light-traffic road when in the opinion of the Department of Transportation, such road is inadequate to carry and will be injuriously affected by vehicles using the said road carrying the maximum axle weight. All such roads so designated shall be conspicuously posted as light-traffic roads and the maximum axle weight authorized shall be displayed on proper signs erected thereon.

(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

(1) Two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each without penalty provided the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more.

(2) When a vehicle is operated in violation of G.S. 20-118(b)(1), 20-118(b)(2), or 20-118(b)(3), but the gross weight of the vehicle or combination of vehicles does not exceed that permitted by G.S. 20-118(b)(3), the owner of the vehicle shall be permitted to shift the load within the vehicle, without penalty, from one axle to another to comply with the weight limits in the following cases:

a. Where the single-axle load exceeds the statutory limits, but does not exceed 21,000 pounds.

b. Where the vehicle or combination of vehicles has tandem axles, but the tandem-axle weight does not exceed 40,000 pounds.

(3) When a vehicle is operated in violation of G.S. 20-118(b)(4) the owner of the vehicle shall be permitted, without penalty, to shift the load within the vehicle from one axle to another to comply with the weight limits where the single-axle weight does not exceed the posted limit by 2,500 pounds.

(4) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting supplies, material or equipment necessary to carry out a farming operation engaged in the production of meats and agricultural crops and livestock or poultry by-products or a business engaged in the harvest or processing of seafood when the destination of such vehicle and load is located solely upon said light-traffic road.

(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is

transporting only the following from its point of origin on a light-traffic road to either one of the two nearest highways that is not a light-traffic road:

a. Processed or unprocessed seafood transported from boats or any other point of origin to a processing plant or a point of further distribution.
b. Meats or agricultural crop products transported from a farm to first market.
c. Forest products originating and transported from a farm or from woodlands to first market without interruption or delay for further packaging or processing after initiating transport.
d. Livestock or poultry transported from their point of origin to first market.
e. Livestock by-products or poultry by-products transported from their point of origin to a rendering plant.
f. Recyclable material transported from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms "recyclable material" and "processing" have the same meaning as in G.S. 130A-290(a).
g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term "garbage" does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5.
h. Treated sludge collected from a wastewater treatment facility.
i. Apples when transported from the orchard to the first processing or packing point.
j. Trees grown as Christmas trees from the field, farm, stand, or grove to first processing point.

(6) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4) when such motor vehicles are owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and such motor vehicles are used in connection with installation, restoration or emergency maintenance of utility services.

(7) A wrecker may tow a disabled vehicle or combination of vehicles in an emergency to the nearest feasible point for parking or storage without being in violation of G.S. 20-118 provided that the wrecker and towed vehicle or combination of vehicles otherwise meet all requirements of this section.

(8) A firefighting vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary and any vehicle of a voluntary lifesaving organization, when operated by a member of that organization while answering an official call shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4).

(9) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 12.

(10) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters shall, when operating for those purposes, be allowed a single axle weight not to exceed 23,500 pounds on the steering axle on vehicles equipped with a boom, or on the rear axle on vehicles loaded from the rear. This exemption shall not apply to vehicles operating on interstate highways, vehicles transporting hazardous waste as defined in G.S. 130A-290(a)(8), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-5(14).

(11) A truck or other motor vehicle shall be exempt for light-traffic road limitations issued under subdivision (b)(4) of this section when transporting heating fuel for on-premises use at a destination located on the light-traffic road.

(12) Subsections (b) and (e) of this section do not apply to a vehicle that (i) is hauling agricultural crops from the farm where they were grown to first market, (ii) is within 35 miles of that farm, (iii) does not operate on an interstate highway or posted bridge while hauling the crops, and meets one of the following descriptions:

a. Is a five-axle combination with a gross weight of no more than 90,000 pounds, a single-axle weight of no more than 22,000 pounds, a tandem-axle weight of no more than 42,000 pounds, and a length of at least 51 feet between the first and last axles of the combination.

b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13.

c. Is a four-axle combination with a gross weight that does not exceed the limit set in subdivision (b)(3) of this section, a single-axle weight of no more than 22,000 pounds, and a tandem-axle weight of no more than 42,000 pounds.

(13) Vehicles specifically designed for fire fighting that are owned by a municipal or rural fire department. This exception does not apply to vehicles operating on interstate highways.

(14) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

a. Is hauling aggregates from a distribution yard or a State-permitted production site within a North Carolina county contiguous to the North Carolina State border to a destination in another state adjacent to that county as verified by a weight ticket in the driver's possession and available for inspection by enforcement personnel.

b. Does not operate on an interstate highway or posted bridge.

c. Does not exceed 69,850 pounds gross vehicle weight and 53,850 pounds per axle grouping for tri-axle vehicles. For purposes of this subsection, a tri-axle vehicle is a single power unit vehicle with a three consecutive axle group on which the respective distance between any two consecutive axles of the group, measured longitudinally center to center to the nearest foot, does not exceed eight feet. For purposes of this subsection, the tolerance provisions of subsection (h) of this section do not apply, and vehicles must be licensed in accordance with G.S. 20-88.

d. Repealed by Session Laws 2001-487, s. 10, effective December 16, 2001.

(15) Subsections (b) and (e) of this section do not apply to a vehicle or vehicle combination that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

a. Is hauling wood residuals, including wood chips, sawdust, mulch, or tree bark.

b. Does not operate on an interstate highway, a posted light-traffic road, or a posted bridge.

c. Does not exceed a maximum gross weight 4,000 pounds in excess of what is allowed in subsection (b) of this section.

d. Does not exceed a single-axle weight of more than 22,000 pounds and a tandem-axle weight of more than 42,000 pounds.

(d) The Department of Transportation is authorized to abrogate certain exceptions. The exceptions provided for in G.S. 20-118(c)(4) and 20-118(c)(5) as applied to any light-traffic road may be abrogated by the Department of Transportation upon a determination of the Department of Transportation that undue damage to such light-traffic road is resulting from such vehicles exempted by G.S. 20-118(c)(4) and 20-118(c)(5). In those cases where the exemption to the light-traffic roads are abrogated by the Department of Transportation, the Department shall post the road to indicate no exemptions.

(e) Penalties. –

(1) Except as provided in subdivision (2) of this subsection, for each violation of the single-axle or tandem-axle weight limits set in subdivision (b)(1), (b)(2), or (b)(4) of this section, the Department of Transportation shall assess a civil penalty against the owner or registrant

of the vehicle in accordance with the following schedule: for the first 1,000 pounds or any part thereof, four cents (4¢) per pound; for the next 1,000 pounds or any part thereof, six cents (6¢) per pound; and for each additional pound, ten cents (10¢) per pound. These penalties apply separately to each weight limit violated. In all cases of violation of the weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted.

(2) The penalty for a violation of the single-axle or tandem-axle weight limits by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (1) of this subsection.

(3) If an axle-group weight of a vehicle exceeds the weight limit set in subdivision (b)(3) of this section plus any tolerance allowed in subsection (h) of this section, the Department of Transportation shall assess a civil penalty against the owner or registrant of the motor vehicle. The penalty shall be assessed on the number of pounds by which the axle-group weight exceeds the limit set in subdivision (b)(3), as follows: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed in subsection (h) of this section. These penalties apply separately to each axle-group weight limit violated.

(4) The penalty for a violation of an axle-group weight limit by a vehicle that is transporting an item listed in subdivision (c)(5) of this section is one-half of the amount it would otherwise be under subdivision (3) of this subsection.

(5) A violation of a weight limit in this section is not punishable under G.S. 20-176.

(f) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 15.

(g) General Statutes 20-118 shall not be construed to permit the gross weight of any vehicle or combination in excess of the safe load carrying capacity established by the Department of Transportation on any bridge pursuant to G.S. 136-72.

(h) Tolerance. – A vehicle may exceed maximum and the inner axle-group weight limitations set forth in subdivision (b)(3) of this section by a tolerance of ten percent (10%). This exception does not authorize a vehicle to exceed either the single-axle or tandem-axle weight limitations set forth in subdivisions (b)(1) and (b)(2) of this section, or the maximum gross weight limit of 80,000 pounds. This exception does not apply to bridges posted under G.S. 136-72 or to vehicles operating on interstate highways. The tolerance allowed under this subsection does not authorize the weight of a vehicle to exceed the weight for which that vehicle is licensed under G.S. 20-88. No tolerance on the single-axle weight or the tandem-axle weight provided for in subdivisions (b)(1) and

(b)(2) of this section shall be granted administratively or otherwise. The Department of Transportation shall report back to the Transportation Oversight Committee and to the General Assembly on the effects of the tolerance granted under this section, any abuses of this tolerance, and any suggested revisions to this section by that Department on or before May 1, 1998.

(i) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 16.

(j) Repealed by Session Laws 1987, c. 392.

(k) From September 1 through March 1 of each year, a vehicle which is equipped with a self-loading bed and which is designed and used exclusively to transport compressed seed cotton from the farm to a cotton gin may operate on the highways of the State, except interstate highways, with a tandem-axle weight not exceeding 44,000 pounds. Such vehicles shall be exempt from light-traffic road limitations only from point of origin on the light-traffic road to the nearest State-maintained road which is not posted to prohibit the transportation of statutory load limits. This exemption does not apply to restricted, posted bridge structures. (1937, c. 407, s. 82; 1943, c. 213, s. 2; cc. 726, 784; 1945, c. 242, s. 2; c. 569, s. 2; c. 576, s. 7; 1947, c. 1079; 1949, c. 1207, s. 2; 1951, c. 495, s. 2; c. 942, s. 1; c. 1013, ss. 5, 6, 8; 1953, cc. 214, 1092; 1959, c. 872; c. 1264, s. 6; 1963, c. 159; c. 610, ss. 3-5; c. 702, s. 5; 1965, cc. 483, 1044; 1969, c. 537; 1973, c. 507, s. 5; c. 1449, ss. 1, 2; 1975, c. 325; c. 373, s. 2; c. 716, s. 5; c. 735; c. 736, ss. 1-3; 1977, c. 461; c. 464, s. 34; 1977, 2nd Sess., c. 1178; 1981, c. 690, ss. 27, 28; c. 726; c. 1127, s. 53.1; 1983, c. 407; c. 724, s. 1; 1983 (Reg. Sess., 1984), c. 1116, ss. 105-109; 1985, c. 54; c. 274; 1987, c. 392; c. 707, ss. 1-4; 1991, c. 202, s. 1; 1991 (Reg. Sess., 1992), c. 905, s. 1; 1993, c. 426, ss. 1, 2; c. 470, s. 1; c. 533, s. 11; 1993 (Reg. Sess., 1994), c. 761, ss. 10-16; 1995, c. 109, s. 3; c. 163, s. 4; c. 332, ss. 1-3 ; c. 509, s. 135.1(b); 1995 (Reg. Sess., 1996), c. 756, s. 29; 1997-354, s. 1; 1997-373, s. 1; 1997-466, s. 2; 1998-149, ss. 8, 9, 9.1; 1998-177, s. 1; 1999-452, s. 23; 2000-57, s. 1; 2001-487, ss. 10, 50(e); 2002-126, s. 26.16(a).)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1043

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S1043-ARB-90 [v.1]

Date _____,2004

Comm. Sub. [NO]
Amends Title [YES]
First Edition

Senator Foxx

moves to amend the bill on page 1, line 3, by rewriting the line to read:
"AGGREGATES AND TO PROVIDE THAT A LAW ENFORCEMENT OFFICER CANNOT ISSUE A CITATION TO A PERSON FOR FAILING TO HAVE IN HIS POSSESSION A SPECIAL PERMIT FOR VEHICLES OF EXCESSIVE SIZE AND WEIGHT IF THE OFFICER DETERMINES THAT THE PERSON HAS BEEN ISSUED A PERMIT AND THE PERSON SUBMITS THE PERMIT WITHIN 30 DAYS OF THE VIOLATION.";

and on page 1, line 22 by rewriting the line to read:
"SECTION 4. G.S. 20-119 is amended by adding a new subsection to read:
'(g) No law enforcement officer shall issue a citation to a person for a violation of this section if the officer is able to determine by electronic means that the person has a valid permit but does not have the permit in his or her possession. Any person issued a citation pursuant to this section who does not have the citation in his or her possession at the time of the issuance of the citation shall not be responsible for a violation if the person submits evidence to the Department of the existence of a valid permit within 30 days of the date of the violation.'

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1043

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S1043-ARB-90 [v.1]

SECTION 5. Section 4 of this act becomes effective January 1, 2005. The remainder of this act is effective when it becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 429

Committee Substitute Favorable 4/8/03

Short Title: Just Comp./Local Gov. Taking. (Public)

Sponsors:

Referred to:

March 12, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE LOCAL GOVERNMENTS TO PAY JUST COMPENSATION FOR REMOVAL OF LAWFULLY ERECTED BUILDINGS, STRUCTURES, OUTDOOR ADVERTISING, OR FIXTURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-121 reads as rewritten:

"**§ 153A-121. General ordinance-making power.**

(a) A county may by ordinance define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the county; and may define and abate nuisances.

(b) This section does not authorize a county to regulate or control vehicular or pedestrian traffic on a street or highway under the control of the Board of Transportation, nor to regulate or control any right-of-way or right-of-passage belonging to a public utility, electric or telephone membership corporation, or public agency of the State. In addition, no county ordinance may regulate or control a highway right-of-way in a manner inconsistent with State law or an ordinance of the Board of Transportation.

(c) This section does not impair the authority of local boards of health to adopt rules and regulations to protect and promote public health.

(d) This section does not authorize a county to enact or amend an ordinance to require the removal of any lawfully erected building, structure, or fixture attached to land, including outdoor advertising, that is not detrimental to the health or safety of its citizens or defined as a nuisance, without the payment of just compensation to the owner of the property removed. No period of amortization shall constitute any portion of just compensation."

SECTION 2. G.S. 160A-174 reads as rewritten:

"**§ 160A-174. General ordinance-making power.**

(a) A city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.

(b) A city ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

(1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution;

(2) The ordinance makes unlawful an act, omission or condition which is expressly made lawful by State or federal law;

(3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law;

(4) The ordinance purports to regulate a subject that cities are expressly forbidden to regulate by State or federal law;

(5) The ordinance purports to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation;

(6) The elements of an offense defined by a city ordinance are identical to the elements of an offense defined by State or federal law.

The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition.

(c) This section does not authorize a municipality to enact or amend an ordinance to require the removal of any lawfully erected building, structure, or fixture attached to land, including outdoor advertising, that is not detrimental to the health or safety of its citizens or defined as a nuisance, without the payment of just compensation to the owner of the property removed. No period of amortization shall constitute any portion of just compensation."

SECTION 3. This act is effective when it becomes law and shall not apply to any ordinance in effect on the effective date of this act.

HOUSE BILL 429:
Monetary Comp./Outdoor Advertising

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Representative Culpepper
Date:	June 21, 2004	**Summary by:**	Kory J. Goldsmith KJG
Version:	H429-CSRC-105[v.1]		

SUMMARY: ***The Proposed Committee Substitute would require cities and counties to pay monetary compensation when the entity requires the owner of a legally-erected, nonconforming, off-premises outdoor advertising to remove the advertising. Monetary compensation may be determined based on a number of factors, but may not exceed five times the annual gross revenue related to the advertising, unless the unit of local government agrees to a higher amount.***

The Proposed Committee Substitute differs from the legislation recommended by the Revenue Laws Committee as follows:

1. It moves the substantive provisions of the bill out of Chapter 136 and the Outdoor Advertising Act and places them in Chapters 153A (Counties) and 160A (Cities); and

2. It "grandfathers" existing amortization ordinances and allows the amortization ordinances to be extended through a city's ETJ authority or annexation.

The act is effective when it becomes law.

CURRENT LAW: Under current law, local governments may require owners of property with a nonconforming structure to remove the structure over a specified time period without the payment of compensation. This practice is commonly referred to as "amortization." State law does not allow use of amortization for removal of outdoor advertising located along federal-aid primary and interstate highways, in compliance with federal law. (G.S. 136-131.1)

BILL ANALYSIS:

Sections 1 and 2 of the PCS would require a local government to pay monetary compensation when it requires an owner to remove nonconforming, off-premises outdoor advertising. The payment of monetary compensation would not be required when the advertising is determined to be a public nuisance or detrimental to the health or safety of the populace or when the local government allows the removal or relocation of the advertising to an equally visible location for purposes of road widening or another governmental development project.

Monetary compensation is defined as the fair market value of the advertising and is determined based on the following factors:

(a) the factors listed in G.S. 105-317.1(a) for determining the value of personal property,

(b) the cost of materials and labor used in constructing the advertising,

(c) the purchase price of the rights to erect and maintain the advertising,

(d) the income derived from the advertising,

(e) the sales price of similar property, and

(f) the listed property tax value of the property.

Unless agreed to by the local government, the amount of monetary compensation could not exceed five times the average amount of the annual gross revenues associated with the advertising, less any placement or agency fees, over the preceding five years.

In lieu of monetary compensation, a local government could enter into a relocation, reconstruction, or removal agreement, so long as the terms of the agreement were agreeable to the owner of the advertising. A local government could take up to three years to pay the monetary compensation, so long as the advertising was allowed to remain in place until monetary compensation is paid.

The new laws would not apply to any city or county that has an amortization ordinance in effect on the effective date of the act. A city could amend an ordinance to extend its application to territory acquired by annexation or located in the extraterritorial jurisdiction of the city. A city could not amend an existing ordinance to shorten the period of amortization.

Section 3 repeals the moratorium that prohibits cities or counties from adopting amortization ordinances or extending the jurisdiction of an existing amortization ordinance. Without this repeal, the moratorium will expire on December 31, 2004.

BACKGROUND: As introduced, House Bill 429 would have amended current law to limit local governments' ability to enact ordinances requiring the removal of structures or property under the amortization method. The bill required any local government ordinance requiring the removal of any lawfully erected building, structure, or item of personal property to also provide for payment of just compensation. The bill also provided that a local government could not use any period of amortization as "just compensation."

The Senate did not take up this version of the bill. Instead, the General Assembly placed a moratorium on local governments enacting new amortization ordinances or extending the jurisdiction of an existing ordinance until December 31, 2004. It also directed the Revenue Laws Study Committee to study the issue and make recommendations. (S.L. 2003-432).

H429-SMRC-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 429

Committee Substitute Favorable 4/8/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H429-CSRC-105 [v.1]

6/22/2004 9:06:21 AM

Short Title: Monetary Comp./Outdoor Advertising. (Public)

Sponsors:

Referred to:

March 12, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE LOCAL GOVERNMENTS TO PAY MONETARY COMPENSATION FOR REMOVAL OF LAWFULLY ERECTED OFF-PREMISES OUTDOOR ADVERTISING SIGNS AND TO AUTHORIZE LOCAL GOVERNMENTS TO ENTER INTO RELOCATION AND RECONSTRUCTION AGREEMENTS WITH OWNERS OF NONCONFORMING OFF-PREMISES OUTDOOR ADVERTISING SIGNS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-143. Regulation of outdoor advertising.**

(a) As used in this section, the term 'off-premises outdoor advertising' includes off-premises outdoor advertising visible from the main-traveled way of any road.

(b) A county may require the removal of an off-premises outdoor advertising sign that is nonconforming under a local ordinance; and may regulate the use of off-premises outdoor advertising within the jurisdiction of the county in accordance with the applicable provisions of this Chapter.

(c) No county may enact or amend an ordinance to require the removal of any nonconforming, lawfully erected off-premises outdoor advertising sign without the payment of monetary compensation to the owners of the off-premises outdoor advertising. The payment of monetary compensation is not required if:

(1) The off-premises outdoor advertising is determined to be a public nuisance or detrimental to the health or safety of the populace; or

(2) The removal is required for road widening or other governmental development projects and the county allows the off-premises outdoor advertising to be relocated to an equally visible and comparable location.

(d) Monetary compensation is the fair market value of the off-premises outdoor advertising in place immediately prior to its removal and without consideration of the effect of the ordinance or any diminution in value caused by the ordinance requiring its removal, less the fair market value of the off-premises outdoor advertising immediately after its removal.

(1) Monetary compensation may be determined based on the following factors:

a. The factors listed in G.S. 105-317.1(a).

b. The cost of materials and labor used in constructing the advertising.

c. The purchase price of the rights to erect and maintain the advertising.

d. The income derived from the advertising.

e. The sales price of similar property.

f. The listed property tax value of the property and any documents regarding value submitted to the taxing authority.

(2) Unless agreed to by the county, the amount of monetary compensation required to be paid under this section shall not exceed five times the average amount of the annual gross revenue associated with the off-premises outdoor advertising, less any placement or agency fees, over the preceding five years.

(e) In lieu of monetary compensation, a county may enter into a relocation, reconstruction, or removal agreement with the owner of a nonconforming off-premises outdoor advertising sign. An agreement under this subsection may allow for the removal of the advertising after a set period of time in lieu of monetary compensation. A county may adopt an ordinance or resolution providing for a relocation, reconstruction, or removal agreement.

(f) A county shall give written notice of its intent to require removal of off-premises outdoor advertising by sending a letter by certified mail to the last known address of the owner of the outdoor advertising and the owner of the property on which the outdoor advertising is located.

(g) If the parties have not entered into an agreement under subsection (e) of this section or agreed to the amount of monetary compensation under subsection (d) of this section within 120 days after the initial notification by the county, the parties shall enter into nonbinding arbitration to resolve their disagreements. The American Arbitration Association rules shall apply to the arbitration. If either party disagrees with the arbitration award, the party may bring an action in Superior Court to determine the amount of monetary compensation to be paid to the owner of the off-premises outdoor advertising under subsection (d) of this section.

(h) A county has up to three years from the effective date of an ordinance enacted under this section to pay monetary compensation to the owner of the off-premises outdoor advertising provided the affected property remains in place until the compensation is paid.

(i) This section does not apply to any ordinance in effect on the effective date of this section. A county may amend an ordinance in effect on the effective date of this section so long as the amendment to the existing ordinance does not reduce the period of amortization in effect on the effective date of this section."

SECTION 2. G.S. Chapter 160A of the General Statutes is amended by adding a new section to read

"**§ 160A-199. Regulation of outdoor advertising.**

(a) As used in this section, the term 'off-premises outdoor advertising' includes off-premises outdoor advertising visible from the main-traveled way of any road.

(b) A city may require the removal of an off-premises outdoor advertising sign that is nonconforming under a local ordinance; and may regulate the use of off-premises outdoor advertising within the jurisdiction of the city in accordance with the applicable provisions of this Chapter.

(c) No city may enact or amend an ordinance to require the removal of any nonconforming, lawfully erected off-premises outdoor advertising sign without the payment of monetary compensation to the owners of the off-premises outdoor advertising. The payment of monetary compensation is not required if:

(1) The off-premises outdoor advertising is determined to be a public nuisance or detrimental to the health or safety of the populace; or

(2) The removal is required for road widening or other governmental development projects and the city allows the off-premises outdoor advertising to be relocated to an equally visible and comparable location.

(d) Monetary compensation is the fair market value of the off-premises outdoor advertising in place immediately prior to its removal and without consideration of the effect of the ordinance or any diminution in value caused by the ordinance requiring its removal, less the fair market value of the off-premises outdoor advertising immediately after its removal.

(1) Monetary compensation may be determined based on the following factors:

a. The factors listed in G.S. 105-317.1(a).

b. The cost of materials and labor used in constructing the advertising.

c. The purchase price of the rights to erect and maintain the advertising.

d. The income derived from the advertising.

e. The sales price of similar property.

f. The listed property tax value of the property and any documents regarding value submitted to the taxing authority.

(2) Unless agreed to by the city, the amount of monetary compensation required to be paid under this section shall not exceed five times the average amount of the annual gross revenue associated with the off-premises outdoor advertising, less any placement or agency fees, over the preceding five years.

(e) In lieu of monetary compensation, a city may enter into a relocation, reconstruction, or removal agreement with the owner of a nonconforming off-premises outdoor advertising sign. An agreement under this subsection may allow for the removal of the advertising after a set period of time in lieu of monetary compensation. A city may adopt an ordinance or resolution providing for a relocation, reconstruction, or removal agreement.

(f) A city shall give written notice of its intent to require removal of off-premises outdoor advertising by sending a letter by certified mail to the last known address of the owner of the outdoor advertising and the owner of the property on which the outdoor advertising is located.

(g) If the parties have not entered into an agreement under subsection (e) of this section or agreed to the amount of monetary compensation under subsection (d) of this section within 120 days after the initial notification by the city, the parties shall enter into nonbinding arbitration to resolve their disagreements. The American Arbitration Association rules shall apply to the arbitration. If either party disagrees with the arbitration award, the party may bring an action in Superior Court to determine the amount of monetary compensation to be paid to the owner of the off-premises outdoor advertising under subsection (d) of this section.

(h) A city has up to three years from the effective date of an ordinance enacted under this section to pay monetary compensation to the owner of the off-premises outdoor advertising provided the affected property remains in place until the compensation is paid.

(i) This section does not apply to any ordinance in effect on the effective date of this section. A city may amend an ordinance in effect on the effective date of this section to extend application of the ordinance to off-premises outdoor advertising located in territory acquired by annexation or located in the extraterritorial jurisdiction of the city. A city shall not amend an ordinance in effect on the effective date of this section to reduce the period of amortization in effect on the effective date of this section."

SECTION 3. Section 1 of S.L. 2003-432 is repealed.

SECTION 4. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 429

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H429-ALY-58 [v.2]

Date 6-22 ,2004

Comm. Sub. [NO]
Amends Title [NO]
H429-CSRC-105

Senator Hagan

moves to amend the bill on page 3, line 2, by rewriting that line to read:
"this section or to any ordinance enacted within one year after the effective date of this section. A county may amend an ordinance in effect on the effective date of this"; and

on page 4, line 24, by rewriting that line to read:
"this section or to any ordinance enacted within one year after the effective date of this section. A city may amend an ordinance in effect on the effective date of this".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 429

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H429-ALY-59 [v.2]

Date 6-22 ,2004

Comm. Sub. [NO]
Amends Title [NO]
H429-CSRC-105
Senator ~~Hagan~~ Harris

moves to amend the bill on page 4, line 29, by rewriting that line to read:
"section. This section does not apply to a city with a population of at least 185,000 based on the most recent federal decennial census.' ".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 429

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

H429-ALY-60 [v.1]

Date 6-22 ,2004

Comm. Sub. [NO]
Amends Title [NO]
H429-CSRC-105

Senator Dorsett

moves to amend the bill on page 2, line 21, by rewriting that line to read:
"the preceding five years or five times the listed property tax value of the property, whichever is less."; and

on page 3, line 44, by rewriting that line to read:
"the preceding five years or five times the listed property tax value of the property, whichever is less.".

SIGNED Fabie D. Dorsett
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 429

Committee Substitute Favorable 4/8/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H429-PCS70479-RC-105

Short Title: Monetary Comp./Outdoor Advertising. (Public)

Sponsors:

Referred to:

March 12, 2003

A BILL TO BE ENTITLED

AN ACT TO REQUIRE LOCAL GOVERNMENTS TO PAY MONETARY COMPENSATION FOR REMOVAL OF LAWFULLY ERECTED OFF-PREMISES OUTDOOR ADVERTISING SIGNS AND TO AUTHORIZE LOCAL GOVERNMENTS TO ENTER INTO RELOCATION AND RECONSTRUCTION AGREEMENTS WITH OWNERS OF NONCONFORMING OFF-PREMISES OUTDOOR ADVERTISING SIGNS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-143. Regulation of outdoor advertising.**

(a) As used in this section, the term 'off-premises outdoor advertising' includes off-premises outdoor advertising visible from the main-traveled way of any road.

(b) A county may require the removal of an off-premises outdoor advertising sign that is nonconforming under a local ordinance and may regulate the use of off-premises outdoor advertising within the jurisdiction of the county in accordance with the applicable provisions of this Chapter.

(c) No county may enact or amend an ordinance to require the removal of any nonconforming, lawfully erected off-premises outdoor advertising sign without the payment of monetary compensation to the owners of the off-premises outdoor advertising. The payment of monetary compensation is not required if:

(1) The off-premises outdoor advertising is determined to be a public nuisance or detrimental to the health or safety of the populace; or

(2) The removal is required for road widening or other governmental development projects, and the county allows the off-premises outdoor advertising to be relocated to an equally visible and comparable location.

(d) Monetary compensation is the fair market value of the off-premises outdoor advertising in place immediately prior to its removal and without consideration of the effect of the ordinance or any diminution in value caused by the ordinance requiring its removal, less the fair market value of the off-premises outdoor advertising immediately after its removal.

(1) Monetary compensation may be determined based on the following factors:

a. The factors listed in G.S. 105-317.1(a).

b. The cost of materials and labor used in constructing the advertising.

c. The purchase price of the rights to erect and maintain the advertising.

d. The income derived from the advertising.

e. The sales price of similar property.

f. The listed property tax value of the property and any documents regarding value submitted to the taxing authority.

(2) Unless agreed to by the county, the amount of monetary compensation required to be paid under this section shall not exceed five times the average amount of the annual gross revenue associated with the off-premises outdoor advertising, less any placement or agency fees, over the preceding five years.

(e) In lieu of monetary compensation, a county may enter into a relocation, reconstruction, or removal agreement with the owner of a nonconforming off-premises outdoor advertising sign. An agreement under this subsection may allow for the removal of the advertising after a set period of time in lieu of monetary compensation. A county may adopt an ordinance or resolution providing for a relocation, reconstruction, or removal agreement.

(f) A county shall give written notice of its intent to require removal of off-premises outdoor advertising by sending a letter by certified mail to the last known address of the owner of the outdoor advertising and the owner of the property on which the outdoor advertising is located.

(g) If the parties have not entered into an agreement under subsection (e) of this section or agreed to the amount of monetary compensation under subsection (d) of this section within 120 days after the initial notification by the county, the parties shall enter into nonbinding arbitration to resolve their disagreements. The American Arbitration Association rules shall apply to the arbitration. If either party disagrees with the arbitration award, the party may bring an action in superior court to determine the amount of monetary compensation to be paid to the owner of the off-premises outdoor advertising under subsection (d) of this section.

(h) A county has up to three years from the effective date of an ordinance enacted under this section to pay monetary compensation to the owner of the off-premises outdoor advertising provided the affected property remains in place until the compensation is paid.

(i) This section does not apply to any ordinance in effect on the effective date of this section. A county may amend an ordinance in effect on the effective date of this section so long as the amendment to the existing ordinance does not reduce the period of amortization in effect on the effective date of this section."

SECTION 2. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-199. Regulation of outdoor advertising.**

(a) As used in this section, the term 'off-premises outdoor advertising' includes off-premises outdoor advertising visible from the main-traveled way of any road.

(b) A city may require the removal of an off-premises outdoor advertising sign that is nonconforming under a local ordinance and may regulate the use of off-premises outdoor advertising within the jurisdiction of the city in accordance with the applicable provisions of this Chapter.

(c) No city may enact or amend an ordinance to require the removal of any nonconforming, lawfully erected off-premises outdoor advertising sign without the payment of monetary compensation to the owners of the off-premises outdoor advertising. The payment of monetary compensation is not required if:

(1) The off-premises outdoor advertising is determined to be a public nuisance or detrimental to the health or safety of the populace; or

(2) The removal is required for road widening or other governmental development projects, and the city allows the off-premises outdoor advertising to be relocated to an equally visible and comparable location.

(d) Monetary compensation is the fair market value of the off-premises outdoor advertising in place immediately prior to its removal and without consideration of the effect of the ordinance or any diminution in value caused by the ordinance requiring its removal, less the fair market value of the off-premises outdoor advertising immediately after its removal.

(1) Monetary compensation may be determined based on the following factors:

a. The factors listed in G.S. 105-317.1(a).

b. The cost of materials and labor used in constructing the advertising.

c. The purchase price of the rights to erect and maintain the advertising.

d. The income derived from the advertising.

e. The sales price of similar property.

f. The listed property tax value of the property and any documents regarding value submitted to the taxing authority.

(2) Unless agreed to by the city, the amount of monetary compensation required to be paid under this section shall not exceed five times the average amount of the annual gross revenue associated with the off-premises outdoor advertising, less any placement or agency fees, over the preceding five years.

(e) In lieu of monetary compensation, a city may enter into a relocation, reconstruction, or removal agreement with the owner of a nonconforming off-premises outdoor advertising sign. An agreement under this subsection may allow for the removal of the advertising after a set period of time in lieu of monetary compensation. A city may adopt an ordinance or resolution providing for a relocation, reconstruction, or removal agreement.

(f) A city shall give written notice of its intent to require removal of off-premises outdoor advertising by sending a letter by certified mail to the last known address of the owner of the outdoor advertising and the owner of the property on which the outdoor advertising is located.

(g) If the parties have not entered into an agreement under subsection (e) of this section or agreed to the amount of monetary compensation under subsection (d) of this section within 120 days after the initial notification by the city, the parties shall enter into nonbinding arbitration to resolve their disagreements. The American Arbitration Association rules shall apply to the arbitration. If either party disagrees with the arbitration award, the party may bring an action in superior court to determine the amount of monetary compensation to be paid to the owner of the off-premises outdoor advertising under subsection (d) of this section.

(h) A city has up to three years from the effective date of an ordinance enacted under this section to pay monetary compensation to the owner of the off-premises outdoor advertising provided the affected property remains in place until the compensation is paid.

(i) This section does not apply to any ordinance in effect on the effective date of this section. A city may amend an ordinance in effect on the effective date of this section to extend application of the ordinance to off-premises outdoor advertising located in territory acquired by annexation or located in the extraterritorial jurisdiction of the city. A city shall not amend an ordinance in effect on the effective date of this section to reduce the period of amortization in effect on the effective date of this section."

SECTION 3. Section 1 of S.L. 2003-432 is repealed.

SECTION 4. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 22, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tim Minton	NC Home Builders Association
	Bode Call & Stroupe
Bernard Bradley	N+O
	UBA
	Cooke Blackmon
Abby Youngkin	GA Staff - Sen. Dalton
Dave Ingram	WSJ
Barry Smith	Freedom Newspapers
Chris Dilla	Pro Tem
	Poyner & Spruill
Elizabeth Dalton	Bone & Assoc.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 22, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
CHARLES ATELTER	NCLM
ANDY ROMANET	NCLM
Jim Blackburn	NC Association of County Commissioners
BILL SCOGGIN	KCLH
Luke Conley	dept of N. Gov.
Charles Floyd	citizen
Lois Dixon	Scenic NC
Butch Gunnells	NCSDA
Susan Salaam	Nature Nook
Chris Valauri	NC Beer & Wine Wholesalers
BRUCE THOMPSON	PARKER POE ADAMS & BERNSTEIN

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 22, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leslie Bowers Cone	NCCBT
Fred Allen	NC Aggregates Assn
Steve Varnedoe	NCDOT
Lacy Love	NCDOT
Tammy C. Denning	NCDOT
Lori McKee	NMSS
Myrick Howard	Preservation NC
Karen Ubell	NCLM
VL McBride	[illegible]
Charlie Dickl	NC Trucking Assoc.
Hollon Skinner	Intern Rep. Culpepper
Mac Roxley	NC Aggregates
Boyd Cansler	City of Charlotte

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 22, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Rhinehardt	DOA - P&C
Mike Mangum	DOA - P&C
Richard O'Brien	Pro Fire Fighters & Paramedics of NC
Jeffrey Smith	Pro. fire fighter. Paramedics of NC
Steve Woodson	NC Farm Bureau
[illegible]	NMRS
Eddie Caldwell	Hoffer & Caldwell, P.A.
Anna Oldham	CWMTF
Tracy Bethea	Sierra Club
Michael Brown	NC DOR
Jean Royall	NC Family Policy Council

VISITOR REGISTRATION SHEET

Senate Commerce Committee — June 22, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rev. Mark Creech	Christian Action League
[signature]	North Carolina Retail Association
Bill Hester	Allied Domecq
Perri Morgan	NFIB
Katherine Davis	Electricities
David Barnes	Poyner + Spruill LLP
Becki Gray	Mutual Distributing Co.
Blair Carr	City of Greensboro
Linda Miles	City of Greensboro
Beau Mills	NC Metropolitan Coalition
John Phelps	NCLM

SENATE COMMERCE COMMITTEE
Wednesday, June 23, 2004 at 1:45 p.m.
Senate Chamber, Legislative Building

MINUTES

The Senate Commerce Committee met at 1:45 p.m. on Wednesday, June 23, 2004, in the Senate Chamber. Six members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced Mr. Tim Hovis, Counsel, to explain SB 1043, Aggregate Truck Weight Limits. Senator Virginia Foxx moved adoption of a proposed committee substitute. Committee discussion showed there was still disagreement. Senator Soles directed staff to work with all concerned parties to arrive at a compromise and said he would call a meeting around his desk prior to session on Thursday.

The meeting adjourned at 1:55 p.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S 1

SENATE BILL 1043

Short Title:	Aggregate Truck Weight Limits.	(Public)
Sponsors:	Senators Garwood, Jenkins; and Foxx.	
Referred to:	Commerce.	

May 11, 2004

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE WEIGHT LIMITS FOR TRUCKS TRANSPORTING AGGREGATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-118(c) is amended by adding a new subdivision to read:

"(16) Subsections (b) and (e) of this section do not apply to a dump truck or dump trailer transporting bulk aggregates, if the vehicle does not exceed the maximum gross weight allowed in subsection (b) of this section."

SECTION 2. G.S. 20-118(e) is amended by adding a new subdivision to read:

"(6) The penalty for violating the gross weight or axle-group weight by a dump truck or dump trailer vehicle transporting bulk aggregate materials intrastate from a site that does not have a certified scale for weighing the vehicle is one-half of the amount it otherwise would be under subdivision (1) of this section."

SECTION 3. G.S. 20-118 is amended by adding a new subsection to read:

"(l) The axle weight limits of this section do not apply to a dump truck or dump trailer transporting bulk aggregates on a posted bridge, if the vehicle does not exceed the posted weight for the bridge."

SECTION 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 1043
PROPOSED COMMITTEE SUBSTITUTE S1043-CSRG-36 [v.2]

6/23/2004 12:21:51 PM

Short Title: Aggregate Truck Weight Limits. (Public)

Sponsors:

Referred to:

May 11, 2004

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE WEIGHT LIMITS FOR TRUCKS TRANSPORTING BULK COMMODITIES OR LOADS AND TO PROVIDE THAT A LAW ENFORCEMENT OFFICER CANNOT ISSUE A CITATION TO A PERSON FOR FAILING TO HAVE IN HIS POSSESSION A SPECIAL PERMIT FOR VEHICLES OF EXCESSIVE SIZE AND WEIGHT IF THE OFFICER DETERMINES THAT THE PERSON HAS BEEN ISSUED A PERMIT AND THE PERSON SUBMITS THE PERMIT WITHIN 30 DAYS OF THE VIOLATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-118(c) is amended by adding a new subdivision to read:

"(16) Subsections (b) and (e) of this section do not apply to a dump truck or dump trailer transporting bulk commodities or loads, if the vehicle does not exceed the maximum gross weight allowed in subsection (b) of this section."

SECTION 2. G.S. 20-118(e) is amended by adding a new subdivision to read:

"(6) The penalty for violating the gross weight or axle-group weight by a dump truck or dump trailer vehicle transporting bulk materials intrastate is one-half of the amount it otherwise would be under subdivisions (1) and (3) of this section."

SECTION 3. G.S. 20-118 is amended by adding a new subsection to read:

"(l) The axle weight limits of this section do not apply to a dump truck or dump trailer transporting bulk commodities or loads on a posted bridge, if the vehicle does not exceed the posted weight for the bridge.

SECTION 4. G.S. 20-119 is amended by adding a new subsection to read:

"(g) No law enforcement officer shall issue a citation to a person for a violation of this section if the officer is able to determine by electronic means that the person has a

valid permit but does not have the permit in his or her possession. Any person issued a citation pursuant to this section who does not have the permit in his or her possession at the time of the issuance of the citation shall not be responsible for a violation and the Department may not impose any fines under this section if the person submits evidence to the Department of the existence of a valid permit within 30 days of the date of the violation."

SECTION 5. Section 4 of this act becomes effective January 1, 2005. The remainder of this act is effective when it becomes law.

SENATE COMMERCE COMMITTEE
Thursday, June 24, 2004 at 9:45 a.m.
Senate Chamber, Legislative Building

MINUTES

The Senate Commerce Committee met at 9:45 a.m. on Thursday, June 24, 2004, in the Senate Chamber. Nine members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles introduced Mr. Tim Hovis, Counsel, to explain a new proposed committee substitute for SB 1043, Aggregate Truck Weight Limits. Senator Virginia Foxx moved adoption of the committee substitute. The motion carried. Senator Foxx then moved to give an unfavorable report to the bill, but favorable report to the proposed committee substitute. The motion carried.

The meeting adjourned at 9:55 a.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

CORRECTED REPORT

Thursday, June 24, 2004

Senator SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

S.B. **1043** Aggregate Truck Weight Limits.

Draft Number:	PCS 65464
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B. **964** Furniture Requirements Contracts.

Draft Number:	PCS 70481
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 1

SENATE BILL 1043

Short Title:	Aggregate Truck Weight Limits.	(Public)
Sponsors:	Senators Garwood, Jenkins; and Foxx.	
Referred to:	Commerce.	

May 11, 2004

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE WEIGHT LIMITS FOR TRUCKS TRANSPORTING AGGREGATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-118(c) is amended by adding a new subdivision to read:

"(16) Subsections (b) and (e) of this section do not apply to a dump truck or dump trailer transporting bulk aggregates, if the vehicle does not exceed the maximum gross weight allowed in subsection (b) of this section."

SECTION 2. G.S. 20-118(e) is amended by adding a new subdivision to read:

"(6) The penalty for violating the gross weight or axle-group weight by a dump truck or dump trailer vehicle transporting bulk aggregate materials intrastate from a site that does not have a certified scale for weighing the vehicle is one-half of the amount it otherwise would be under subdivision (1) of this section."

SECTION 3. G.S. 20-118 is amended by adding a new subsection to read:

"(l) The axle weight limits of this section do not apply to a dump truck or dump trailer transporting bulk aggregates on a posted bridge, if the vehicle does not exceed the posted weight for the bridge."

SECTION 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S D

SENATE BILL 1043
PROPOSED COMMITTEE SUBSTITUTE S1043-CSRG-36 [v.8]

6/24/2004 9:29:40 AM

Short Title: Aggregate Truck Weight Limits. (Public)

Sponsors:

Referred to:

May 11, 2004

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE WEIGHT LIMITS FOR TRUCKS TRANSPORTING CERTAIN MATERIALS AND TO PROVIDE THAT A LAW ENFORCEMENT OFFICER CANNOT ISSUE A CITATION TO A PERSON FOR FAILING TO HAVE IN HIS POSSESSION A SPECIAL PERMIT FOR VEHICLES OF EXCESSIVE SIZE AND WEIGHT IF THE OFFICER DETERMINES THAT THE PERSON HAS BEEN ISSUED A PERMIT AND THE PERSON SUBMITS THE PERMIT WITHIN 30 DAYS OF THE VIOLATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-118(c)(15) reads as rewritten:

"(15) Subsections (b) and (e) of this section do not apply to a vehicle or vehicle combination that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:

a. Is hauling wood residuals, including wood chips, sawdust, mulch, or tree ~~bark.~~ bark, or is transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings from a site that does not have a certified scale for weighing the vehicle.

b. Does not operate on an interstate highway, a posted light-traffic road, or a posted bridge.

c. Does not exceed a maximum gross weight 4,000 pounds in excess of what is allowed in subsection (b) of this section.

d. Does not exceed a single-axle weight of more than 22,000 pounds and a tandem-axle weight of more than 42,000 pounds."

SECTION 2. G.S. 20-118(e) is amended by adding a new subdivision to read:

"(6) The penalty for violating the gross weight or axle-group weight by a dump truck or dump trailer vehicle transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings intrastate from a site that does not

have a certified scale for weighing the vehicle is one-half of the amount it otherwise would be under subdivisions (1) and (3) of this section."

SECTION 3. G.S. 20-119 is amended by adding a new subsection to read:

"(g) No law enforcement officer shall issue a citation to a person for a violation of this section if the officer is able to determine by electronic means that the person has a valid permit but does not have the permit in his or her possession. Any person issued a citation pursuant to this section who does not have the permit in his or her possession at the time of the issuance of the citation shall not be responsible for a violation and the Department of Crime Control and Public Safety may not impose any fines under this section if the person submits evidence to the Department of the existence of a valid permit within 30 days of the date of the violation."

SECTION 4. Section 3 of this act becomes effective January 1, 2005. The remainder of this act is effective when it becomes law.

Senate Commerce Committee
Thursday, July 1, 2004, 8:30 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 486	Customer Inquiries/Insurance Coverage.	Senator Queen
HB 173	Cosmetic Art/Continuing Ed/Penalty Change.	Representative Howard
HB 1107	Utiliz. Review & Grievance Amendments.	Representative Wilson

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Thursday, July 1, 2004 at 8:30 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 8:30 a.m. on Thursday, July 1, 2004, in Room 1027 of the Legislative Building. Eleven members of the committee were present. Senator R. C. Soles, Jr., presided. He introduced the pages: Bryan Cockfield of Gastonia, sponsored by Senator David Hoyle; Raggs Rascoe of Windsor, sponsored by Senator Clark Jenkins; Tori Daniels of Lenoir, sponsored by Senator Marc Basnight; and Christina Weaver of Mt. Holly, sponsored by Senator Jim Forrester.

Senator Soles introduced Representative Connie Wilson, sponsor of HB 1107, Utiliz. Review & Grievance Amendments, to explain a proposed committee substitute for the bill. The substitute had been requested by the Department of Insurance. Senator Tony Rand moved adoption of the committee substitute for discussion purposes. The motion carried. Mr. Frank Folger, Legislative Liaison from the Department of Insurance, answered questions and told the committee the Department favors the substitute. Senator Rand sent forth an amendment to the committee substitute and moved it be adopted, and that it be engrossed into the proposed committee substitute and be given a favorable report. The motion carried.

Senator Soles introduced Representative Hugh Holliman to explain the changes made by the House in SB 486, Customer Inquiries/Insurance Coverage. He provided an article from *The Charlotte Observer* that explained the problem the bill addresses (attached). Senator Phil Berger moved to recommend concurrence. The motion carried.

Senator Soles introduced Representative Julia Howard to explain the proposed committee substitute for HB 173, Cosmetic Art/Continuing Ed/Penalty Change. Senator Berger moved the committee substitute be adopted for discussion purposes. The motion carried. Senator Rand sent forth an amendment to delete the provision excluding certain practitioners from the continuing education requirement and to change the word "will" to "may" regarding the provision of classes being offered in secondary languages as needed. He moved the adoption of the amendment. The motion carried. After further discussion, Senator Rand sent forth a second amendment to preclude members from the Cosmetology Board from offering continuing education classes, and moved it be adopted. Mr. Doug Van Essen said the Cosmetology Board had no problem with the two amendments. Senator Rand then moved the amendments be engrossed into the proposed committee substitute and it be given a favorable report. The motion carried.

The meeting adjourned at 8:59 a.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Thursday, July 01, 2004

Senator SOLES, JR.,
submits the following with recommendations as to passage:

FAVORABLE AS TO CONCURRENCE

S.B.(HCS #2) **486** Customer Inquiries/Insurance Coverage.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, July 06, 2004

Senator SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **173** Cosmetic Art/Continuing Ed/Penalty Change.

Draft Number:	PCS 70491
Sequential Referral:	Finance
Recommended Referral:	None
Long Title Amended:	No

H.B.(CS #1) **1107** Utiliz. Review & Grievance Amendments.

Draft Number:	PCS 30570
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 2

HOUSE BILL 1107

Committee Substitute Favorable 5/1/03

Short Title: Utiliz. Review & Grievance Amendments. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING MANAGED CARE UTILIZATION REVIEW AND GRIEVANCE PROCEDURES TO MAKE THEM CONFORM WITH THE UNITED STATES DEPARTMENT OF LABOR CLAIM RULES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The catch line of G.S. 58-50-61 reads as rewritten:

"**§ 58-50-61. Utilization ~~review.~~ review, claim determinations, and appeals.**

SECTION 1.(b) G.S. 58-50-61(a) is amended as follows:

"(1) "Adverse benefit determination" means any of the following: a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for, a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a participant's or beneficiary's eligibility to participate in a health benefit plan, and including the issuance of a noncertification indicating denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for, a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.

(2) "Claim for benefits" means a request for a plan benefit or benefits made by a covered person in accordance with an insurer's reasonable procedure for filing benefit claims, and a claim for benefits includes any preservice claims within the meaning of subdivision (14a) of this subsection and any postservice claims within the meaning of subdivision (14b) of this subsection.

(3) "Claim involving urgent care":

a. Is any claim for medical care or treatment with respect to which the application of the time periods for making nonurgent care determinations:

1. Could seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function; or

2. In the opinion of a physician with knowledge of the covered person's medical condition, would subject the covered person to severe pain that cannot be adequately managed without the care or treatment that is the subject of the claim.

b. Except as provided in sub-subdivision c. of this subsection, whether a claim is a "claim involving urgent care" within the meaning of sub-subdivision a. of this subsection is to be determined by an individual acting on behalf of the insurer applying the judgment of a prudent layperson who possesses an average knowledge of health and medicine.

c. Any claim that a physician with knowledge of the covered person's medical condition determines is a "claim involving urgent care" within the meaning of sub-subdivision a. of this subsection shall be treated as a "claim involving urgent care" for purposes of this section.

~~(1)~~(3a) "Clinical peer" means a health care professional who holds an unrestricted license in a state of the United States, in the same or similar specialty, and routinely provides the health care services subject to utilization review.

~~(2)~~(3b) "Clinical review criteria" means the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by an insurer to determine medically necessary services and supplies.

~~(3)~~(3c) "Covered person" means a policyholder, subscriber, enrollee, or other individual covered by a health benefit plan. "Covered person" includes another person, other than the covered person's provider, who is authorized to act on behalf of a covered person.

...

(13a) "Notice" or "notification" means the delivery or furnishing of information to an individual in a manner that satisfies the standards of 29 CFR § 2520.104b-1(b) as appropriate with respect to material required to be furnished or made available to an individual.

...

(14a) "Preservice claim" means any claim for a benefit under a health benefit plan with respect to which the terms of the plan condition receipt of the benefit, in whole or in part, on approval of the benefit in advance of obtaining medical care.

(14b) "Postservice claim" means any claim for a benefit under a health benefit plan that is not a preservice claim as defined in this section.

...

(15a) "Relevant", when used to describe a document, record, or other information concerning a covered person's claim, means a document, record, or other information that:

a. Was relied upon in making the benefit determination.

b. Was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination.

c. Demonstrates compliance with the administrative processes and safeguards required pursuant to subdivision (f)(5) of this section in making the benefit determination.

d. Constitutes a statement of policy or guidance with respect to the health benefit plan concerning the denied treatment option or benefit for the covered person's diagnosis, without regard to whether such advice or statement was relied upon in making the benefit determination."

SECTION 1.(c) G.S. 58-50-61(a)(6) reads as rewritten:

"(6) "Grievance" means a written complaint submitted by a covered person about ~~any of the following:~~ a matter that is not a claim determination, except that any complaint that is solely about the fact that a service which is clearly excluded in the certificate of coverage is an excluded service, and that is not about a claim determination, is not a grievance.

~~a. An insurer's decisions, policies, or actions related to availability, delivery, or quality of health care services. A written complaint submitted by a covered person about a decision rendered solely on the basis that the health benefit plan contains a benefits exclusion for the health care service in question is not a grievance if the exclusion of the specific service requested is clearly stated in the certificate of coverage.~~

~~b. Claims payment or handling; or reimbursement for services.~~

~~c. The contractual relationship between a covered person and an insurer.~~

~~d. The outcome of an appeal of a noncertification under this section.~~"

SECTION 1.(d) G.S. 58-50-61(a)(8) reads as rewritten:

"(8) "Health care provider" or "health care professional" means any person who is licensed, registered, or certified under Chapter 90 of the General Statutes or the laws of another state to provide health care services in the ordinary care of business or practice or a profession or in an approved education or training ~~program;~~ program and also includes a health care facility as defined in G.S. 131E-176(9b) or the

laws of another state to operate as a health care facility; or a pharmacy."

SECTION 1.(e) G.S. 58-50-61(a)(16) reads as rewritten:

"(16) "Stabilize" means to provide medical care that is appropriate to prevent a material deterioration of the person's condition, within reasonable medical probability, in accordance with the ~~HCFA (Health Care Financing Administration)~~ CMS (Centers for Medicare and Medicaid Services) interpretative guidelines, policies, and regulations pertaining to responsibilities of hospitals in emergency cases (as provided under the Emergency Medical Treatment and Labor Act, section 1867 of the Social Security Act, 42 U.S.C.S. § 1395dd), including medically necessary services and supplies to maintain stabilization until the person is transferred."

SECTION 2. Subsections (b) through (l) of G.S. 58-50-61 read as rewritten:

"(b) Insurer ~~Oversight.~~ Oversight of Utilization Review. – Every insurer shall monitor all utilization review carried out by or on behalf of the insurer and ensure compliance with this section. An insurer shall ensure that appropriate personnel have operational responsibility for the conduct of the insurer's utilization review program. If an insurer contracts to have a URO perform its utilization review, the insurer shall monitor the URO to ensure compliance with this section, which shall include:

(1) A written description of the URO's activities and responsibilities, including reporting requirements.

(2) Evidence of formal approval of the utilization review organization program by the insurer.

(3) A process by which the insurer evaluates the performance of the URO.

(c) Scope and Content of Utilization Review Program. – Every insurer shall prepare and maintain a utilization review program document that describes all delegated and nondelegated review functions for covered services including:

(1) Procedures to evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health services.

(2) Data sources and clinical review criteria used in decision making.

(3) The process for conducting appeals of noncertifications.

(4) Mechanisms to ensure consistent application of review criteria and compatible decisions.

(5) Data collection processes and analytical methods used in assessing utilization of health care services.

(6) Provisions for assuring confidentiality of clinical and patient information in accordance with State and federal law.

(7) The organizational structure (e.g., utilization review committee, quality assurance, or other committee) that periodically assesses utilization review activities and reports to the insurer's governing body.

(8) The staff position functionally responsible for day-to-day program management.

(9) The methods of collection and assessment of data about underutilization and overutilization of health care services and how the assessment is used to evaluate and improve procedures and criteria for utilization review.

(d) Utilization Review Program Operations. – In every utilization review program, an insurer or URO shall use documented clinical review criteria that are based on sound clinical evidence and that are periodically evaluated to assure ongoing efficacy. An insurer may develop its own clinical review criteria or purchase or license clinical review criteria. Criteria for determining when a patient needs to be placed in a substance abuse treatment program shall be either (i) the diagnostic criteria contained in the most recent revision of the American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Substance-Related Disorders or (ii) criteria adopted by the insurer or its URO. The Department, in consultation with the Department of Health and Human Services, may require proof of compliance with this subsection by a plan or URO.

Qualified health care professionals shall administer the utilization review program and oversee review decisions under the direction of a medical doctor. A medical doctor licensed to practice medicine in this State shall evaluate the clinical appropriateness of noncertifications. Compensation to persons involved in utilization review shall not contain any direct or indirect incentives for them to make any particular review decisions. Compensation to utilization reviewers shall not be directly or indirectly based on the number or type of noncertifications they render. In issuing a utilization review decision, an insurer shall: obtain all information required to make the decision, including pertinent clinical information; employ a process to ensure that utilization reviewers apply clinical review criteria consistently; and issue the decision in a timely manner pursuant to this section.

(e) Insurer ~~Responsibilities.~~Responsibilities for Utilization Review. – Every insurer shall:

(1) Routinely assess the effectiveness and efficiency of its utilization review program.

(2) Coordinate the utilization review program with its other medical management activity, including quality assurance, credentialing, provider contracting, data reporting, grievance procedures, processes for assessing satisfaction of covered persons, and risk management.

(3) Provide covered persons and their providers with access to its review staff by a toll-free or collect call telephone number whenever any provider is required to be available to provide services which may require prior certification to any plan enrollee. Every insurer shall establish standards for telephone accessibility and monitor telephone service as indicated by average speed of answer and call abandonment rate, on at least a month-by-month basis, to ensure that telephone service is adequate, and take corrective action when necessary.

(4) Limit its requests for information to only that information that is necessary to certify the admission, procedure or treatment, length of stay, and frequency and duration of health care services.

(5) Have written procedures for making utilization review decisions and for notifying covered persons of those decisions.

(6) Have written procedures to address the failure or inability of a provider or covered person to provide all necessary information for review. If a provider or covered person fails to release necessary information in a timely manner, the insurer may deny certification.

~~(f) Prospective and Concurrent Reviews. As used in this subsection, "necessary information" includes the results of any patient examination, clinical evaluation, or second opinion that may be required. Prospective and concurrent determinations shall be communicated to the covered person's provider within three business days after the insurer obtains all necessary information about the admission, procedure, or health care service. If an insurer certifies a health care service, the insurer shall notify the covered person's provider. For a noncertification, the insurer shall notify the covered person's provider and send written or electronic confirmation of the noncertification to the covered person. In concurrent reviews, the insurer shall remain liable for health care services until the covered person has been notified of the noncertification.~~

~~(g) Retrospective Reviews. As used in this subsection, "necessary information" includes the results of any patient examination, clinical evaluation, or second opinion that may be required. For retrospective review determinations, an insurer shall make the determination within 30 days after receiving all necessary information. For a certification, the insurer may give written notification to the covered person's provider. For a noncertification, the insurer shall give written notification to the covered person and the covered person's provider within five business days after making the noncertification.~~

~~(h) Notice of Noncertification. A written notification of a noncertification shall include all reasons for the noncertification, including the clinical rationale, the instructions for initiating a voluntary appeal or reconsideration of the noncertification, and the instructions for requesting a written statement of the clinical review criteria used to make the noncertification. An insurer shall provide the clinical review criteria used to make the noncertification to any person who received the notification of the noncertification and who follows the procedures for a request.~~

~~(i) Requests for Informal Reconsideration. An insurer may establish procedures for informal reconsideration of noncertifications and, if established, the procedures shall be in writing. After a written notice of noncertification has been issued in accordance with subsection (h) of this section, the reconsideration shall be conducted between the covered person's provider and a medical doctor licensed to practice medicine in this State designated by the insurer. An insurer shall not require a covered person to participate in an informal reconsideration before the covered person may appeal a noncertification under subsection (j) of this section. If, after informal reconsideration, the insurer upholds the noncertification decision, the insurer shall issue a new notice in accordance with subsection (h) of this section. If the insurer is unable to render an~~

~~informal reconsideration decision within 10 business days after the date of receipt of the request for an informal reconsideration, it shall treat the request for informal reconsideration as a request for an appeal; provided that the requirements of subsection (k) of this section for acknowledging the request shall apply beginning on the day the insurer determines an informal reconsideration decision cannot be made before the tenth business day after receipt of the request for an informal reconsideration.~~

~~(j) Appeals of Noncertifications. Every insurer shall have written procedures for appeals of noncertifications by covered persons or their providers acting on their behalves, including expedited review to address a situation where the time frames for the standard review procedures set forth in this section would reasonably appear to seriously jeopardize the life or health of a covered person or jeopardize the covered person's ability to regain maximum function. Each appeal shall be evaluated by a medical doctor licensed to practice medicine in this State who was not involved in the noncertification.~~

~~(k) Nonexpedited Appeals. Within three business days after receiving a request for a standard, nonexpedited appeal, the insurer shall provide the covered person with the name, address, and telephone number of the coordinator and information on how to submit written material. For standard, nonexpedited appeals, the insurer shall give written notification of the decision, in clear terms, to the covered person and the covered person's provider within 30 days after the insurer receives the request for an appeal. If the decision is not in favor of the covered person, the written decision shall contain:~~

- ~~(1) The professional qualifications and licensure of the person or persons reviewing the appeal.~~
- ~~(2) A statement of the reviewers' understanding of the reason for the covered person's appeal.~~
- ~~(3) The reviewers' decision in clear terms and the medical rationale in sufficient detail for the covered person to respond further to the insurer's position.~~
- ~~(4) A reference to the evidence or documentation that is the basis for the decision, including the clinical review criteria used to make the determination, and instructions for requesting the clinical review criteria.~~
- ~~(5) A statement advising the covered person of the covered person's right to request a second level grievance review and a description of the procedure for submitting a second level grievance under G.S. 58-50-62.~~

~~(l) Expedited Appeals. An expedited appeal of a noncertification may be requested by a covered person or his or her provider acting on the covered person's behalf only when a nonexpedited appeal would reasonably appear to seriously jeopardize the life or health of a covered person or jeopardize the covered person's ability to regain maximum function. The insurer may require documentation of the medical justification for the expedited appeal. The insurer shall, in consultation with a medical doctor licensed to practice medicine in this State, provide expedited review, and the insurer shall communicate its decision in writing to the covered person and his or~~

~~her provider as soon as possible, but not later than four days after receiving the information justifying expedited review. The written decision shall contain the provisions specified in subsection (k) of this section. If the expedited review is a concurrent review determination, the insurer shall remain liable for the coverage of health care services until the covered person has been notified of the determination. An insurer is not required to provide an expedited review for retrospective noncertifications.~~

(f) Obligation to Establish and Maintain Reasonable Claims Procedures. – Every insurer that offers a health benefit plan shall establish and maintain reasonable procedures governing the filing of benefit claims, notification of benefit determinations, and appeal of adverse benefit determinations (hereinafter collectively referred to as claims procedures). The claims procedures for a health benefit plan will be deemed to be reasonable only if:

(1) The claims procedures comply with the requirements of this subsection and subsections (h) through (k) of this section, as appropriate.

(2) A description of all claims procedures, including any procedures for obtaining prior approval as a prerequisite for obtaining a benefit, such as preauthorization procedures or utilization review procedures and the applicable time frames is included as part of a certificate or policy of coverage.

(3) The claims procedures do not contain any provision and are not administered in a way that unduly inhibits or hampers the initiation or processing of claims for benefits. For example, a provision or practice that requires payment of a fee or costs as a condition to making a claim or to appealing an adverse benefit determination would be considered to unduly inhibit the initiation and processing of claims for benefits. Also, the denial of a claim for failure to obtain a prior approval under circumstances that would make obtaining such prior approval impossible or where application of the prior approval process could seriously jeopardize the life or health of the covered person (e.g., the covered person is unconscious and in need of immediate care at the time medical treatment is required) would constitute a practice that unduly inhibits the initiation and processing of a claim.

(4) The claims procedures do not preclude an authorized representative of a covered person from acting on behalf of such covered person in pursuing a benefit claim or appeal of an adverse benefit determination. Nevertheless, an insurer may establish reasonable procedures for determining whether an individual has been authorized to act on behalf of a covered person, provided that, in the case of a claim involving urgent care within the meaning of subdivision (3) of subsection (a) of this section, a health care professional, within the meaning of subdivision (8) of subsection (a) of this section, with knowledge of a covered person's medical condition shall be permitted to act as the authorized representative of the covered person.

(5) The claims procedures contain administrative processes and safeguards designed to ensure and to verify that benefit claim determinations are made in accordance with governing plan documents and that, where appropriate, the plan provisions have been applied consistently with respect to similarly situated covered persons.

(6) The claims procedures provide for the handling of claims filed not in accordance with procedures.

a. The claims procedures provide that, in the case of a failure by a covered person or an authorized representative of a covered person to follow the insurer's procedures for filing a preservice claim, within the meaning of subdivision (14a) of subsection (a) of this section, the covered person or representative shall be notified of the failure and the proper procedures to be followed in filing a claim for benefits. This notification shall be provided to the covered person or authorized representative, as appropriate, as soon as possible, but not later than five days (24 hours in the case of a failure to file a claim involving urgent care) following the failure. Notification may be oral, unless written notification is requested by the covered person or authorized representative.

b. Sub-subdivision a. of this subdivision shall apply only in the case of a failure that is a communication (i) by a covered person or an authorized representative of a covered person that is received by a person or organizational unit of the insurer that is customarily responsible for handling benefit matters and (ii) that names a specific covered person, a specific medical condition or symptom, and a specific treatment, service, or product for which approval is requested.

(7) The claims procedures do not contain any provision and are not administered in a way that requires a covered person to file more than two appeals of an adverse benefit determination prior to bringing a civil action under section 502(a) of ERISA.

(8) To the extent that an insurer offers voluntary levels of appeal other than external review under Part 4 of this Article, including voluntary arbitration or any other form of dispute resolution, in addition to those permitted by subdivision (7) of this subsection, the claims procedures provide that:

a. The insurer waives any right to assert that a covered person has failed to exhaust administrative remedies because the covered person did not elect to submit a benefit dispute to any such voluntary level of appeal provided by the insurer.

b. The insurer agrees that any statute of limitations or other defense based on timeliness is tolled during the time that any such voluntary appeal is pending.

c. The claims procedures provide that a covered person may elect to submit a benefit dispute to such voluntary level of appeal only after exhaustion of the appeals permitted by subdivision (7) of this subsection.

d. The insurer provides to any covered person, upon request, sufficient information relating to the voluntary level of appeal to enable the covered person to make an informed judgment about whether to submit a benefit dispute to the voluntary level of appeal, including a statement that the decision of a covered person as to whether or not to submit a benefit dispute to the voluntary level of appeal will have no effect on the covered person's rights to any other benefits under the health benefit plan and information about the applicable rules, the covered person's right to representation, the process for selecting the decision maker, and the circumstances, if any, that may affect the impartiality of the decision maker, such as any financial or personal interests in the result or any past or present relationship with any party to the review process.

e. No fees or costs are imposed on the covered person as part of the voluntary level of appeal.

(9) The claims procedures do not contain any provision for the mandatory arbitration of adverse benefit determinations except to the extent that the health benefit plan or procedures provide that:

a. The arbitration is conducted as one of the two appeals described in subdivision (7) of this subsection and in accordance with the requirements applicable to such appeals.

b. The covered person is not precluded from challenging the decision under section 502(a) of ERISA, external review under Part 4 of this Article, or G.S. 90-21.50 through G.S. 90-21.56.

(g) Timing of Notification of Benefit Determination. –

(1) The insurer shall notify a covered person of the plan's benefit determination in accordance with sub-subdivisions a. through c. of this subdivision, as appropriate.

a. Urgent care claims. – In the case of a claim involving urgent care, the insurer shall notify the covered person of its benefit determination, whether adverse or not, as soon as possible, taking into account the medical exigencies, but not later than 72 hours after receipt of the claim by the insurer, unless the covered person fails to provide sufficient information to determine whether, or to what extent, benefits are covered or payable under the health benefit plan. In the case of such a failure, the insurer shall notify the covered person as soon as possible, but not later than 24 hours after its receipt of the claim, of the specific information necessary to complete the

claim. The covered person shall be afforded a reasonable amount of time, taking into account the circumstances, but not less than 48 hours, to provide the specified information. Notification of any adverse benefit determination pursuant to this subsection shall be made in accordance with subsection (h) of this section. The insurer shall notify the covered person of its benefit determination as soon as possible, but in no case later than 48 hours after the earlier of (i) the insurer's receipt of the specified information or (ii) the end of the period afforded the covered person to provide the specified additional information.

b. Concurrent care decisions. – If an insurer has approved an ongoing course of treatment to be provided over a period of time or number of treatments:

1. Any reduction or termination by the insurer of such course of treatment, other than by plan amendment or termination before the end of such period of time or number of treatments that is permitted under G.S. 58-3-200(c) shall constitute an adverse benefit determination. The insurer shall notify the covered person, in accordance with subsection (h) of this section, of the adverse benefit determination at a time sufficiently in advance of the reduction or termination to allow the covered person to appeal and obtain a determination on review of that adverse benefit determination before the benefit is reduced or terminated.

2. Any request by a covered person to extend the course of treatment beyond the period of time or number of treatments that is a claim involving urgent care shall be decided as soon as possible, taking into account the medical exigencies, and the insurer shall notify the covered person of the benefit determination, whether adverse or not, within 24 hours after its receipt of the claim, provided that any such claim is made to the insurer at least 24 hours prior to the expiration of the prescribed period of time or number of treatments. Notification of any adverse benefit determination concerning a request to extend the course of treatment, whether involving urgent care or not, shall be made in accordance with subsection (h) of this section, and appeal shall be governed by subdivision (1) of subsection (j) of this section, as appropriate.

c. Other claims. – In the case of a claim not described in sub-subdivision a. or b. of this subdivision, the insurer shall notify the covered person of its benefit determination in

accordance with sub-subdivision a. of this subdivision, as appropriate.

1. Preservice claims. – In the case of a preservice claim, the insurer shall notify the covered person of its benefit determination, whether adverse or not, within a reasonable period of time appropriate to the medical circumstances, but not later than 15 days after its receipt of the claim. This period may be extended one time by the plan for up to 15 days, provided that the insurer both determines that such an extension is necessary due to matters beyond the control of the insurer and notifies the covered person, prior to the expiration of the initial 15-day period, of the circumstances requiring the extension of time and the date by which it expects to render a decision. If such an extension is necessary due to a failure of the covered person to submit the information necessary to decide the claim, the notice of extension shall specifically describe the required information and the covered person shall be afforded at least 45 days from receipt of the notice within which to provide the specified information. Notification of any adverse benefit determination pursuant to this subsection shall be made in accordance with subsection (h) of this section.

2. Postservice claims. – In the case of a postservice claim, the insurer shall notify the covered person, in accordance with subsection (h) of this section, of its adverse benefit determination within a reasonable period of time, but not later than 30 days after receipt of the claim. This period may be extended one time by the insurer for up to 15 days, provided that the insurer both determines that such an extension is necessary due to matters beyond the control of the insurer and notifies the covered person, prior to the expiration of the initial 30-day period, of the circumstances requiring the extension of time and the date by which it expects to render a decision. If such an extension is necessary due to a failure of the covered person to submit the information necessary to decide the claim, the notice of extension shall specifically describe the required information and the covered person shall be afforded at least 45 days from receipt of the notice within which to provide the specified information.

(2) Calculating time periods. – For purposes of this subsection, the period of time within which a benefit determination is required to be made

shall begin at the time a claim is filed in accordance with the reasonable procedures of an insurer, without regard to whether all the information necessary to make a benefit determination accompanies the filing. In the event that a period of time is extended as permitted pursuant to sub-subdivision c. of subdivision (1) of this subsection due to a covered person's failure to submit information necessary to decide a claim, the period for making the benefit determination shall be tolled from the date on which the notification of the extension is sent to the covered person until the date on which the covered person responds to the request for additional information.

(h) Manner and Content of Notification of Benefit Determination. –

(1) Except as provided in subdivision (2) of this subsection, the insurer shall provide a covered person with written or electronic notification of any adverse benefit determination. The notification shall set forth, in a manner calculated to be understood by the covered person:

a. The specific reason or reasons for the adverse determination.

b. Reference to the specific health benefit plan provisions on which the determination is based.

c. A description of any additional material or information necessary for the covered person to perfect the claim and an explanation of why such material or information is necessary.

d. A description of the insurer's appeal procedures and the time limits applicable to such procedures, including a statement of the covered person's right to bring a civil action under section 502(a) of ERICA following an adverse benefit determination on appeal, if applicable, and right to request an external review under Part 4 of this Article, if the claim determination is a noncertification.

e. In the case of an adverse benefit determination:

1. If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either (i) the specific rule, guideline, protocol, or other similar criterion or (ii) a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the covered person upon request.

2. If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the health benefit plan to the covered person's

medical circumstances, or a statement that such explanation will be provided free of charge upon request.

f. In the case of an adverse benefit determination concerning a claim involving urgent care, a description of the expedited process applicable to an appeal of such claims.

g. Notice of the availability of assistance from:

1. The Commissioner's office, including the telephone number and address of the Commissioner's office.

2. The Managed Care Patient Assistance Program, including the telephone number and address of the Program.

(2) In the case of an adverse benefit determination by an insurer concerning a claim involving urgent care, the information described in subdivision (1) of this subsection may be provided to the covered person orally within the time frame prescribed in sub-subdivision (g)(1)a. of this section, provided that a written or electronic notification in accordance with subdivision (1) of this subsection is furnished to the covered person not later than three days after the oral notification.

(i) Appeal of Adverse Benefit Determinations. –

(1) In general. – Every insurer shall establish and maintain a procedure by which a covered person shall have a reasonable opportunity to appeal an adverse benefit determination to an appropriately named fiduciary of the plan and under which there will be a full and fair review of the claim and the adverse benefit determination.

(2) Full and fair review. – The claims procedures of an insurer will not be deemed to provide a covered person with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless the claims procedures:

a. Provide covered persons the opportunity to submit written comments, documents, records, and other information relating to the claim for benefits.

b. Provide that a covered person shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the covered person's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to the definition provided under subdivision (15a) of subsection (a) of this section.

c. Provide for a review that takes into account all comments, documents, records, and other information submitted by the covered person relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

d. Provide covered persons at least 180 days following receipt of a notification of an adverse benefit determination within which to appeal the determination.

e. Provide for a review that does not afford deference to the initial adverse benefit determination and that is conducted by an appropriately named fiduciary of the plan who is neither the individual who made the adverse benefit determination that is the subject of the appeal nor the subordinate of such individual.

f. Provide that, in deciding an appeal of any adverse benefit determination that is based in whole or in part on a medical judgment, including determinations with regard to whether a particular treatment, drug, or other item is experimental, investigational, or not medically necessary or appropriate, the appropriately named fiduciary shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment.

g. Provide for the identification of medical or vocational experts whose advice was obtained on behalf of the insurer in connection with a covered person's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination.

h. Provide that the health care professional engaged for purposes of a consultation under sub-subdivision c. of this subdivision shall be an individual who is neither an individual who was consulted in connection with the adverse benefit determination that is the subject of the appeal nor the subordinate of any such individual.

i. Provide, in the case of a claim involving urgent care, for an expedited review process pursuant to which (i) a request for an expedited appeal of an adverse benefit determination may be submitted orally or in writing by the covered person and (ii) all necessary information, including the insurer's benefit determination on review, shall be transmitted between the insurer and the covered person by telephone, facsimile, or other available similarly expeditious method.

(j) Timing of Notification of Benefit Determination on Appeal. –

(1) The insurer shall notify a covered person of its benefit determination on review in accordance with sub-subdivisions a. through c. of this subdivision as appropriate.

a. Urgent care claims. – In the case of a claim involving urgent care, the insurer shall notify the covered person, in accordance with subsection (k) of this section, of its benefit determination on review as soon as possible, taking into account the medical exigencies, but not later than 72 hours after receipt of the

covered person's request for review of an adverse benefit determination by the insurer.

b. Preservice claims. – In the case of a preservice claim, the insurer shall notify the covered person, in accordance with subsection (k) of this section, of its benefit determination on review within a reasonable period of time appropriate to the medical circumstances as follows:

1. In the case of an insurer that provides for one appeal of an adverse benefit determination, notification shall be provided not later than 30 days after receipt by the insurer of the covered person's request for review of an adverse benefit determination.

2. In the case of an insurer that provides for two appeals of an adverse benefit determination and makes the second level mandatory for purposes of a covered person's access to federal remedies under section 502(a) of ERISA, notification shall be provided, with respect to any one of such two appeals, not later than 15 days after receipt by the insurer of the covered person's request for review of the adverse benefit determination.

3. In the case of an insurer that provides for two appeals of an adverse benefit determination and makes the second level voluntary for purposes of a covered person's access to federal remedies under section 502(a) of ERISA, notification shall be provided, for the first level, within 30 days after receipt by the insurer of the covered person's request for review of the adverse benefit determination and, for the second level, within 55 days of receipt by the insurer of the covered person's request for review of the adverse benefit determination.

c. Postservice claims. – In the case of a postservice claim, the insurer shall notify the covered person, in accordance with subsection (k) of this section, of its benefit determination on review within a reasonable period of time as follows:

1. In the case of an insurer that provides for one appeal of an adverse benefit determination, notification shall be provided not later than 60 days after receipt by the insurer of the covered person's request for review of an adverse benefit determination.

2. In the case of an insurer that provides for two appeals of an adverse benefit determination and makes the second level mandatory for purposes of a covered person's access to federal remedies under section 502(a) of ERISA, notification shall be provided, with respect to

any one of such two appeals, not later than 30 days after receipt by the insurer of the covered person's request for review of the adverse benefit determination.

3. In the case of an insurer that provides for two appeals of an adverse benefit determination and makes the second level voluntary for purposes of a covered person's access to federal remedies under section 502(a) of ERISA, notification shall be provided, for the first level, within 60 days after receipt by the insurer of the covered person's request for review of the adverse benefit determination and, for the second level, within 55 days of receipt by the insurer of the covered person's request for review of the adverse benefit determination.

(2) Calculating time periods. – For purposes of this subsection, the period of time within which a benefit determination on review is required to be made shall begin at the time an appeal is filed in accordance with the reasonable procedures of an insurer, without regard to whether all the information necessary to make a benefit determination on review accompanies the filing.

(3) Furnishing documents. – In the case of an adverse benefit determination on review, the insurer shall provide such access to, and copies of, documents, records, and other information described in subdivisions (3) and (4) of subsection (k) of this section as is appropriate.

(k) Manner and Content of Notification of Benefit Determination on Appeal. – The insurer shall provide a covered person with written or electronic notification of the insurer's benefit determination on review. In the case of an adverse benefit determination, the notification shall set forth, in a manner calculated to be understood by the covered person:

(1) The specific reason or reasons for the adverse determination.

(2) Reference to the specific health benefit plan provisions on which the adverse benefit determination is based.

(3) A statement that the covered person is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the covered person's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to subdivision (15a) of subsection (a) of this section.

(4) A statement describing any appeal procedures, including any voluntary appeal procedures, offered by the insurer and the covered person's right to obtain the information about such procedures described in subsection (f) of this section, a statement of the covered person's right to bring a civil action under section 502(a) of ERISA following an adverse benefit determination on appeal, if applicable, and a statement

describing the external review process under Part 4 of this Article and the right to request an external review under Part 4 of this Article, if the claim determination is a noncertification.

a. If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion, or a statement that such rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of the rule, guideline, protocol, or other similar criterion will be provided free of charge to the covered person upon request.

b. If the adverse benefit determination is based on a medical necessity, experimental treatment or similar exclusion or limit, or other noncertification: (i) either an explanation of the scientific or clinical judgment for the determination, applying the terms of the health benefit plan to the covered person's medical circumstances, or a statement that such explanation will be provided free of charge upon request; and (ii) a description of the external review process under Part 4 of this Article, a statement of the covered person's right to request an external review, and notice of the availability of assistance from the Commissioner's office, including the telephone number and address of the Commissioner's office, and the Managed Care Patient Assistance Program, including the telephone number and address of the Program."

SECTION 3. G.S. 58-50-62 reads as rewritten:

"**§ 58-50-62. Insurer grievance procedures.**

(a) Purpose and Intent. – The purpose of this section is to provide standards for the establishment and maintenance of procedures by insurers to assure that covered persons have the opportunity for appropriate resolutions of their grievances.

(b) Availability of Grievance Process. – Every insurer shall have a grievance process whereby a covered person may voluntarily request a review of a grievance. ~~any decision, policy, or action of the insurer that affects that covered person. A decision rendered solely on the basis that the health benefit plan does not provide benefits for the health care service in question is not subject to the insurer's grievance procedures, if the exclusion of the specific service requested is clearly stated in the certificate of coverage.~~ The grievance process may provide for an immediate informal consideration by the insurer of a ~~grievance. If the insurer does not have a procedure for informal consideration or if an informal consideration does not resolve the grievance, the grievance process shall~~ grievance and shall provide for ~~first and second level reviews of grievances. Appeal of a noncertification that has been reviewed under G.S. 58-50-61 shall be reviewed as a second level grievance under this section.~~ a formal review of grievances.

(b1) Informal Consideration of Grievances. – If the insurer provides procedures for informal consideration of grievances, the procedures shall be in writing, and the following requirements apply:

(1) If the grievance concerns a clinical issue and the informal consideration decision is not in favor of the covered person, the insurer shall treat the request as a request for a ~~first-level~~ grievance review, except that the requirements of subdivision (e)(1) of this section apply on the day the decision is made or on the tenth business day after receipt of the request for informal consideration, whichever is sooner;

(2) If the grievance concerns a nonclinical issue and the informal consideration decision is not in favor of the covered person, the insurer shall issue a written decision that includes the information set forth in subsection (c) of this section; or

(3) If the insurer is unable to render an informal consideration decision within 10 business days after receipt of the grievance, the insurer shall treat the request as a request for a first-level grievance review, except that the requirements of subdivision (e)(1) of this section apply beginning on the day the insurer determines an informal consideration decision cannot be made before the tenth business day after receipt of the grievance.

(c) Grievance Procedures. – Every insurer shall have written procedures for receiving and resolving grievances from covered persons. A description of the grievance procedures shall be set forth in or attached to the certificate of coverage and member handbook provided to covered persons. The description shall include a statement informing the covered person that the grievance procedures are voluntary and shall also inform the covered person about the availability of the Commissioner's office and Managed Care Patient Assistance Program for assistance, including the telephone number and address of ~~the~~ each office.

(d) Maintenance of Records. – Every insurer shall maintain records of each grievance received and the insurer's review of each grievance, as well as documentation sufficient to demonstrate compliance with this section. The maintenance of these records, including electronic reproduction and storage, shall be governed by rules adopted by the Commissioner that apply to insurers. The insurer shall retain these records for three years or until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later.

(e) ~~First-Level~~ Grievance Review. – A covered person or a covered person's provider acting on the covered person's behalf may submit a grievance.

(1) ~~The insurer does not have to allow a covered person to attend the first-level grievance review. A covered person may submit written material. Except as provided in subdivision (3) of this subsection, within three business days after receiving a grievance, the insurer shall provide the covered person with the name, address, and telephone number of the coordinator and information on how to submit written material.~~ Except

as provided in subdivisions (2) through (4) of this subsection, a grievance shall be reviewed in accordance with the standards for review of an appeal of an adverse benefit determination under G.S. 58-50-61, including the requirements for full and fair review, the requirements for timing of notification for a determination on appeal of a postservice claim, and the requirements for content of notification of decision.

(2) ~~An insurer shall issue a written decision, in clear terms, to the covered person and, if applicable, to the covered person's provider, within 30 days after receiving a grievance. The person or persons reviewing the grievance shall not be the same person or persons who initially handled the matter that is the subject of the grievance and, if the issue is a clinical one, at least one of whom shall be a medical doctor with appropriate expertise to evaluate the matter. Except as provided in subdivision (3) of this subsection, if the decision is not in favor of the covered person, the written decision issued in a first-level grievance review shall contain:~~

~~a. The professional qualifications and licensure of the person or persons reviewing the grievance.~~

~~b. A statement of the reviewers' understanding of the grievance.~~

~~c. The reviewers' decision in clear terms and the contractual basis or medical rationale in sufficient detail for the covered person to respond further to the insurer's position.~~

~~d. A reference to the evidence or documentation used as the basis for the decision.~~

~~e. A statement advising the covered person of his or her right to request a second-level grievance review and a description of the procedure for submitting a second-level grievance under this section.~~

Notification of a determination on a grievance review shall include a statement that the decision is the insurer's final determination in the matter, when the determination is made at the final level of grievance review.

(3) For grievances concerning the quality of clinical care delivered by the covered person's provider, the insurer shall acknowledge the grievance within 10 business days. The acknowledgement shall advise the covered person that (i) the insurer will refer the grievance to its quality assurance committee for review and consideration or any appropriate action against the provider and (ii) State law does not allow for a second-level grievance review for grievances concerning quality of care.

(4) Provisions under G.S. 58-50-61(i) and (k) relating to clinical aspects of an appeal of an adverse benefit determination shall apply to grievance review only to the extent that the subject matter of a grievance is

clinical in nature. Provisions under G.S. 58-50-61(j) and (l) that apply only to noncertifications shall not apply to grievance review, except that the requirement under G.S. 58-50-61(j)(4)b. to notify the covered person of the availability of assistance from the Commissioner's office and the Managed Care Patient Assistance Program shall apply.

~~(f) Second-Level Grievance Review. An insurer shall establish a second-level grievance review process for covered persons who are dissatisfied with the first-level grievance review decision or a utilization review appeal decision. A covered person or the covered person's provider acting on the covered person's behalf may submit a second-level grievance.~~

~~(1) An insurer shall, within 10 business days after receiving a request for a second-level grievance review, make known to the covered person:~~

~~a. The name, address, and telephone number of a person designated to coordinate the grievance review for the insurer.~~

~~b. A statement of a covered person's rights, which include the right to request and receive from an insurer all information relevant to the case; attend the second-level grievance review; present his or her case to the review panel; submit supporting materials before and at the review meeting; ask questions of any member of the review panel; and be assisted or represented by a person of his or her choice, which person may be without limitation to: a provider, family member, employer representative, or attorney. If the covered person chooses to be represented by an attorney, the insurer may also be represented by an attorney.~~

~~(2) An insurer shall convene a second-level grievance review panel for each request. The panel shall comprise persons who were not previously involved in any matter giving rise to the second-level grievance, are not employees of the insurer or URO, and do not have a financial interest in the outcome of the review. A person who was previously involved in the matter may appear before the panel to present information or answer questions. All of the persons reviewing a second-level grievance involving a noncertification or a clinical issue shall be providers who have appropriate expertise, including at least one clinical peer. Provided, however, an insurer that uses a clinical peer on an appeal of a noncertification under G.S. 58-50-61 or on a first-level grievance review panel under this section may use one of the insurer's employees on the second-level grievance review panel in the same matter if the second-level grievance review panel comprises three or more persons.~~

~~(g) Second-Level Grievance Review Procedures. An insurer's procedures for conducting a second-level grievance review shall include:~~

~~(1) The review panel shall schedule and hold a review meeting within 45 days after receiving a request for a second-level review.~~

~~(2) The covered person shall be notified in writing at least 15 days before the review meeting date.~~

~~(3) The covered person's right to a full review shall not be conditioned on the covered person's appearance at the review meeting.~~

~~(h) Second-Level Grievance Review Decisions. – An insurer shall issue a written decision to the covered person and, if applicable, to the covered person's provider, within seven business days after completing the review meeting. The decision shall include:~~

~~(1) The professional qualifications and licensure of the members of the review panel.~~

~~(2) A statement of the review panel's understanding of the nature of the grievance and all pertinent facts.~~

~~(3) The review panel's recommendation to the insurer and the rationale behind that recommendation.~~

~~(4) A description of or reference to the evidence or documentation considered by the review panel in making the recommendation.~~

~~(5) In the review of a noncertification or other clinical matter, a written statement of the clinical rationale, including the clinical review criteria, that was used by the review panel to make the recommendation.~~

~~(6) The rationale for the insurer's decision if it differs from the review panel's recommendation.~~

~~(7) A statement that the decision is the insurer's final determination in the matter. In cases where the review concerned a noncertification and the insurer's decision on the second-level grievance review is to uphold its initial noncertification, a statement advising the covered person of his or her right to request an external review and a description of the procedure for submitting a request for external review to the Commissioner of Insurance.~~

~~(8) Notice of the availability of the Commissioner's office for assistance, including the telephone number and address of the Commissioner's office.~~

~~(i) Expedited Second-Level Procedures. – An expedited second-level review shall be made available where medically justified as provided in G.S. 58-50-61(l), whether or not the initial review was expedited. The provisions of subsections (f), (g), and (h) of this section apply to this subsection except for the following timetable: When a covered person is eligible for an expedited second-level review, the insurer shall conduct the review proceeding and communicate its decision within four days after receiving all necessary information. The review meeting may take place by way of a telephone conference call or through the exchange of written information.~~

(j) No insurer shall discriminate against any provider based on any action taken by the provider under this section or G.S. 58-50-61 on behalf of a covered person.

(k) Violation. – A violation of this section subjects an insurer to G.S. 58-2-70."

SECTION 4. G.S. 58-3-225(c) reads as rewritten:

"(c) If the claim is denied, the notice shall include all of the specific good faith reason or reasons for the denial, including, without limitation, coordination of benefits, lack of eligibility, or lack of coverage for the services provided. If the claim is contested or cannot be paid because the proof of loss is inadequate or incomplete, or not paid pending receipt of requested coordination of benefits information, the notice shall contain the specific good faith reason or reasons why the claim has not been paid and an itemization or description of all of the information needed by the insurer to complete the processing of the claim. If all or part of the claim is contested or cannot be paid because of the application of a specific utilization management or medical necessity standard is not satisfied, the notice shall contain the specific clinical rationale for that decision or shall refer to specific provisions in documents that are made readily available through the insurer which provide the specific clinical rationale for that decision; however, if a notice of noncertification has already been provided under G.S. 58-50-61(h), then the specific clinical rationale for the decision is not required under this subsection. If the claim is contested or cannot be paid because of nonpayment of premiums, the notice shall contain a statement advising the claimant of the nonpayment of premiums. If a claim is not paid pending receipt of requested coordination of benefits information, the notice shall so specify. If a claim is denied or contested in part, the insurer shall pay the undisputed portion of the claim within 30 calendar days after receipt of the claim and send the notice of the denial or contested status within 30 days after receipt of the claim. If a claim is contested or cannot be paid because the claim was not submitted on the required form, the notice shall contain the required form, if the form is other than a UP or HCFA form, and instructions to complete that form. Upon receipt of additional information requested in its notice to the claimant, the insurer shall continue processing the claim and pay or deny the claim within 30 days after receiving the additional information. Any retraction of a determination or reduction of payments that is made because of the discovery of a misrepresentation shall only be made in accordance with G.S. 58-50-61(g) if the determination being reversed is a concurrent care determination."

SECTION 5. G.S. 58-50-75 reads as rewritten:

"**§ 58-50-75. Purpose, scope, and definitions.**

(a) The purpose of this Part is to provide standards for the establishment and maintenance of external review procedures to assure that covered persons have the opportunity for an independent review of an appeal decision upholding a noncertification ~~or a second-level grievance review decision upholding a noncertification,~~ as defined in this Part.

(b) This Part applies to all insurers that offer a health benefit plan and that provide or perform utilization review pursuant to G.S. 58-50-61, the Teachers' and State Employees' Comprehensive Major Medical Plan, and the Health Insurance Program for Children. ~~With respect to second-level grievance review decisions, this Part applies only to second-level grievance review decisions involving noncertification decisions.~~

(c) In addition to the definitions in G.S. 58-50-61(a), as used in this Part:

(1) "Covered benefits" or "benefits" means those benefits consisting of medical care, provided directly through insurance or otherwise and

including items and services paid for as medical care, under the terms of a health benefit plan.

(2) "Covered person" means a policyholder, subscriber, enrollee, or other individual covered by a health benefit plan. "Covered person" includes another person, including the covered person's health care provider, acting on behalf of the covered person. Nothing in this subdivision shall require the covered person's health care provider to act on behalf of the covered person.

(3) "Independent review organization" or "organization" means an entity that conducts independent external reviews of appeals of ~~noncertifications and second level grievance review decisions.~~ noncertifications."

SECTION 6. G.S. 58-50-77 reads as rewritten:

"**§ 58-50-77. Notice of right to external review.**

(a) An insurer shall notify the covered person in writing of the covered person's right to request an external review and include the appropriate statements and information set forth in this section at the time the insurer sends written notice of:

(1) A noncertification decision under G.S. 58-50-61; and

(2) ~~An appeal decision~~ A notice of determination on an appeal under ~~G.S. 58-50-61~~ G.S. 58-50-61(j) upholding a ~~noncertification; and~~ noncertification.

~~(3) A second level grievance review decision under G.S. 58-50-62 upholding the original noncertification.~~

(b) The insurer shall include in the notice required under subsection (a) of this section for a notice related to a noncertification decision under G.S. 58-50-61, a statement informing the covered person that if the covered person has a medical condition where the time frame for completion of an ~~expedited review~~ urgent care claim review of an appeal decision involving a noncertification decision under G.S. 58-50-61 would reasonably be expected to seriously jeopardize the life or health of the covered person or jeopardize the covered person's ability to regain maximum function, then the covered person may file a request for an expedited external review under G.S. 58-50-82 at the same time the covered person files a request for an ~~expedited review~~ urgent care claim review of an appeal involving a noncertification decision under G.S. 58-50-61, but that the Commissioner will determine whether the covered person shall be required to complete the ~~expedited review~~ urgent care claim review of the grievance before conducting the expedited external review.

(c) The insurer shall include in the notice required under subsection (a) of this section for a notice related to an appeal decision under G.S. 58-50-61, a statement informing the covered person that:

(1) If the covered person has a medical condition where the time frame for completion of an ~~expedited review of a grievance~~ urgent care claim review involving an appeal decision under G.S. 58-50-61 would reasonably be expected to seriously jeopardize the life or health of the covered person or jeopardize the covered person's ability to regain

maximum function, the covered person may file a request for an expedited external review under G.S. 58-50-82 at the same time the covered person files a request for an ~~expedited review of a grievance~~ urgent care claim review involving an appeal decision under G.S. 58-50-62, but that the Commissioner will determine whether the covered person shall be required to complete the ~~expedited review~~ urgent care claim review ~~of the grievance~~ before conducting the expedited external review.

(2) If the covered person has not received a written decision from the insurer within ~~60 days after the date the covered person files the second level grievance with the insurer pursuant to G.S. 58-50-62~~ five days of the date by which the insurer was to have notified the covered person of its determination pursuant to G.S. 58-50-61(j) and the covered person has not requested or agreed to a delay, the covered person may file a request for external review under G.S. 58-50-80 and shall be considered to have exhausted the insurer's internal ~~grievance~~ appeal process for purposes of G.S. 58-50-79.

(d) The insurer shall include in the notice required under subsection (a) of this section for a notice related to ~~a final second level grievance review decision under G.S. 58-50-62,~~ any notice of determination on an appeal under G.S. 58-50-61(k), a statement informing the covered person that:

(1) If the covered person has a medical condition where the time frame for completion of a standard external review under G.S. 58-50-80 would reasonably be expected to seriously jeopardize the life or health of the covered person or jeopardize the covered person's ability to regain maximum function, the covered person may file a request for an expedited external review under G.S. 58-50-82; or

(2) If the ~~second level grievance review~~ final appeal decision concerns an admission, availability of care, continued stay, or health care service for which the covered person received emergency services but has not been discharged from a facility, the covered person may request an expedited external review under G.S. 58-50-82.

(e) In addition to the information to be provided under this section, the insurer shall include a copy of the description of both the standard and expedited external review procedures the insurer is required to provide under G.S. 58-50-93, including the provisions in the external review procedures that give the covered person the opportunity to submit additional information."

SECTION 7. G.S. 58-50-79 reads as rewritten:

"§ 58-50-79. Exhaustion of internal ~~grievance~~ appeal process.

(a) Except as provided in G.S. 58-50-82, a request for an external review under G.S. 58-50-80 or G.S. 58-50- 82 shall not be made until the covered person has exhausted the insurer's internal appeal ~~and grievance processes~~ process under ~~G.S. 58-50-61 and G.S. 58-50-62.~~ G.S. 58-50-61.

(b) A covered person shall be considered to have exhausted the insurer's internal ~~grievance~~ appeal process for purposes of this section, if the covered person:

(1) Has ~~filed a second level grievance~~ completed the appeals process for ~~involving a~~ noncertification appeal ~~decision~~ decisions under ~~G.S. 58-50-61 and G.S. 58-50-62,~~ G.S. 58-50-61, and

(2) Except to the extent the covered person requested or agreed to a delay, has not received a written decision ~~on the grievance~~ from the insurer within ~~60 days since the date the covered person filed the grievance with the insurer.~~ five days of the date by which the insurer was to have notified the covered person of its determination pursuant to G.S. 58-50-61(j).

(c) Notwithstanding subsection (b) of this section, a covered person may not make a request for an external review of a noncertification involving a retrospective review determination made under G.S. 58-50-61 until the covered person has exhausted the insurer's internal ~~grievance~~ appeal process.

(d) A request for an external review of a noncertification may be made before the covered person has exhausted the insurer's internal ~~grievance and~~ appeal procedures under G.S. 58-50-61 ~~and G.S. 58-50-62~~ whenever the insurer agrees to waive the exhaustion requirement. If the requirement to exhaust the insurer's internal ~~grievance~~ appeal procedures is waived, the covered person may file a request in writing for a standard external review as set forth in G.S. 58-50-80 or may make a request for an expedited external review as set forth in G.S. 58-50-82. ~~In addition, the insurer may choose to eliminate the second level grievance review under G.S. 58-50-62.~~ In such case, the covered person may file a request in writing for a standard external review under G.S. 58-50-80 or may make a request for an expedited external review as set forth in G.S. 58-50-82 within 60 days after receiving notice of an appeal decision upholding a noncertification."

SECTION 8. G.S. 58-50-80(b) reads as rewritten:

"(b) Upon receipt of a request for an external review under subsection (a) of this section, the Commissioner shall, within 10 business days, complete all of the following:

(1) Notify and send a copy of the request to the insurer that made the decision which is the subject of the request. The notice shall include a request for any information that the Commissioner requires to conduct the preliminary review under subdivision (2) of this subsection and require that the insurer deliver the requested information to the Commissioner within three business days of receipt of the notice.

(2) Conduct a preliminary review of the request to determine whether:

a. The individual is or was a covered person in the health benefit plan at the time the health care service was requested or, in the case of a retrospective review, was a covered person in the health benefit plan at the time the health care service was provided.

b. The health care service that is the subject of the insurer's noncertification appeal decision ~~or the second level grievance~~

~~review decision upholding a noncertification~~ reasonably appears to be a covered service under the covered person's health benefit plan.

c. The covered person has exhausted the insurer's internal appeal ~~and grievance~~ processes under ~~G.S. 58-50-61 and G.S. 58-50-62,~~ G.S. 58-50-61, unless the covered person is considered to have exhausted the insurer's internal appeal ~~or grievance~~ process under G.S. 58-50-79, or unless the insurer has waived its right to conduct an ~~expedited~~ urgent care claim review of the appeal decision.

d. The covered person has provided all the information and forms required by the Commissioner that are necessary to process an external review.

(3) Notify in writing the covered person and the covered person's provider who performed or requested the service whether the request is complete and whether the request has been accepted for external review. If the request is complete and accepted for external review, the notice shall include a copy of the information that the insurer provided to the Commissioner pursuant to subdivision (b)(1) of this section, and inform the covered person that the covered person may submit to the assigned independent review organization in writing, within seven days after the date of the notice, additional information and supporting documentation relevant to the initial denial for the organization to consider when conducting the external review. If the covered person chooses to send additional information to the assigned independent review organization, then the covered person shall at the same time and by the same means, send a copy of that information to the insurer. The Commissioner shall also notify the covered person in writing of the availability of assistance from the Managed Care Patient Assistance Program, including the telephone number and address of the Program.

(4) Notify the insurer in writing whether the request for external review has been accepted. If the request has been accepted, the notice shall direct the insurer or its designee utilization review organization to provide to the assigned organization, within seven days of receipt of the notice, the documents and any information considered in making the noncertification appeal ~~decision or the second level grievance review~~ decision.

(5) Assign the review to an independent review organization approved under G.S. 58-50-85. The assignment shall be made using an alphabetical list of the independent review organizations, systematically assigning reviews on a rotating basis to the next independent review organization on that list capable of performing the review to conduct the external review. After the last organization on

the list has been assigned a review, the Commissioner shall return to the top of the list to continue assigning reviews.

(6) Forward to the review organization that was assigned by the Commissioner any documents that were received relating to the request for external review."

SECTION 9. G.S. 58-50-80(e) reads as rewritten:

"(e) Failure by the insurer or its designee utilization review organization to provide the documents and information within the time specified in this subsection shall not delay the conduct of the external review. However, if the insurer or its utilization review organization fails to provide the documents and information within the time specified in subdivision (b)(4) of this section, the assigned organization may terminate the external review and make a decision to reverse the noncertification appeal ~~decision or the second-level grievance review~~ decision. Within one business day of making the decision under this subsection, the organization shall notify the covered person, the insurer, and the Commissioner."

SECTION 10. G.S. 58-50-80(g) reads as rewritten:

"(g) Upon receipt of the information required to be forwarded under subsection (f) of this section, the insurer may reconsider its noncertification appeal decision ~~or second-level grievance review decision~~ that is the subject of the external review. Reconsideration by the insurer of its noncertification appeal decision ~~or second-level grievance review decision~~ under this subsection shall not delay or terminate the external review. The external review shall be terminated if the insurer decides, upon completion of its reconsideration, to reverse its noncertification appeal decision ~~or second-level grievance review decision~~ and provide coverage or payment for the requested health care service that is the subject of the noncertification appeal ~~decision or second-level grievance review~~ decision."

SECTION 11. G.S. 58-50-80(h) reads as rewritten:

"(h) Upon making the decision to reverse its noncertification appeal decision ~~or second-level grievance review decision~~ under subsection (g) of this section, the insurer shall notify the covered person, the organization, and the Commissioner in writing of its decision. The organization shall terminate the external review upon receipt of the notice from the insurer sent under this subsection."

SECTION 12. G.S. 58-50-80(j) reads as rewritten:

"(j) Within 45 days after the date of receipt by the Commissioner of the request for external review, the assigned organization shall provide written notice of its decision to uphold or reverse the noncertification appeal decision ~~or second-level grievance review decision~~ to the covered person, the insurer, the covered person's provider who performed or requested the service, and the Commissioner. In reaching a decision, the assigned review organization is not bound by any decisions or conclusions reached during the insurer's utilization review process or the insurer's internal ~~grievance~~ appeal process under ~~G.S. 58-50-61 and G.S. 58-50-62.~~ G.S. 58-50-61."

SECTION 13. G.S. 58-50-80(l) reads as rewritten:

"(l) Upon receipt of a notice of a decision under subsection (k) of this section reversing the noncertification appeal ~~decision or second-level grievance review~~

decision, the insurer shall within three business days reverse the noncertification appeal decision ~~or second-level grievance review decision~~ that was the subject of the review and shall provide coverage or payment for the requested health care service or supply that was the subject of the noncertification appeal ~~decision or second-level grievance review~~ decision. In the event the covered person is no longer enrolled in the health benefit plan when the insurer receives notice of a decision under subsection (k) of this section reversing the noncertification appeal ~~decision or second-level grievance review~~ decision, the insurer that made the noncertification appeal decision ~~or second-level grievance review decision~~ shall be responsible under this section only for the costs of those services or supplies the covered person received or would have received prior to disenrollment if the service had not been denied when first requested."

SECTION 14. G.S. 58-50-82 reads as rewritten:

"**§ 58-50-82. Expedited external review.**

(a) Except as provided in subsection (g) of this section, a covered person may make a written or oral request for an expedited external review with the Commissioner at the time the covered person receives:

(1) A noncertification decision under ~~G.S. 58-50-61(f)~~ G.S. 58-50-61(g) if:

a. The covered person has a medical condition where the time frame for completion of an ~~expedited~~ urgent care claim review of an appeal involving a noncertification set forth in ~~G.S. 58-50-61(l)~~ G.S. 58-50-61(j) would be reasonably expected to seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; and

b. The covered person has filed a request for ~~an expedited appeal~~ an urgent care claim review of an appeal under ~~G.S. 58-50-61(l).~~ G.S. 58-50-61(j).

(2) An appeal decision under ~~G.S. 58-50-61(k) or (l)~~ G.S. 58-50-61(j) that is not the insurer's final level of appeal upholding a noncertification if:

a. The noncertification appeal decision involves a medical condition of the covered person for which the time frame for completion of an ~~expedited second-level grievance review of a noncertification set forth in G.S. 58-50-62(i)~~ appeal of an urgent care claim would reasonably be expected to seriously jeopardize the life or health of the covered person or jeopardize the covered person's ability to regain maximum function; and

b. The covered person has filed a request for ~~an expedited second-level review~~ an urgent care claim review of an appeal of a noncertification at the final level of appeal offered by the insurer as set forth in ~~G.S. 58-50-61(i);~~G.S. 58-50-61(j); or

(3) ~~A second-level grievance review~~ A final appeal decision under ~~G.S. 58-60-62(h) or (i)~~ G.S. 58-50-61(j) upholding a noncertification:

a. If the covered person has a medical condition where the time frame for completion of a standard external review under G.S. 58-50-80 would reasonably be expected to seriously jeopardize the life or health of the covered person or jeopardize the covered person's ability to regain maximum function; or

b. If the ~~second-level grievance~~ final appeal concerns a noncertification of an admission, availability of care, continued stay, or health care service for which the covered person received emergency services, but has not been discharged from a facility.

(b) Within three days of receiving a request for an expedited external review, the Commissioner shall complete all of the following:

(1) Notify the insurer that made the ~~noncertification,~~ noncertification or noncertification appeal ~~decision, or second-level grievance review~~ decision which is the subject of the request that the request has been received and provide a copy of the request or verbally convey all of the information included in the request. The Commissioner shall also request any information from the insurer necessary to make the preliminary review set forth in G.S. 58-50-80(b)(2) and require the insurer to deliver the information not later than one day after the request was made.

(2) Determine whether the request is eligible for external review and, if it is eligible, determine whether it is eligible for expedited review.

a. For a request made pursuant to subdivision (a)(1) of this section that the Commissioner has determined meets the reviewability requirements set forth in G.S. 58-50-80(b)(2), determine, based on medical advice from a medical professional who is not affiliated with the organization that will be assigned to conduct the external review of the request, whether the request should be reviewed on an expedited basis because the time frame for completion of an ~~expedited review~~ urgent care claim review of an appeal under ~~G.S. 58-50-61(1)~~ G.S. 58-50-61(j) would reasonably be expected to seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function. The Commissioner shall then inform the covered person, the covered person's provider who performed or requested the service, and the insurer whether the Commissioner has accepted the covered person's request for an expedited external review. If the Commissioner has accepted the covered person's request for an expedited external review, then the Commissioner shall, in accordance with G.S. 58-50-80, assign an organization to conduct the review within the appropriate time frame. If the Commissioner

has not accepted the covered person's request for an expedited external review, then the covered person shall be informed by the Commissioner that the covered person must exhaust, at a minimum, one level of the insurer's internal appeal process under ~~G.S. 58-50-61(1)~~ G.S. 58-50-61(j) before making another request for an external review with the Commissioner.

b. For a request made pursuant to subdivision (a)(2) of this section that the Commissioner has determined meets the reviewability requirements set forth in G.S. 58-50-80(b)(2), the Commissioner shall determine, based on medical advice from a medical professional who is not affiliated with the organization that will be assigned to conduct the external review of the request, whether the request should be reviewed on an expedited basis because the time frame for completion of an ~~expedited review~~ urgent care claim review of an appeal under ~~G.S. 58-50-62~~ G.S. 58-50-61 would reasonably be expected to seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function. The Commissioner shall then inform the covered person, the covered person's provider who performed or requested the service, and the insurer whether the Commissioner has accepted the covered person's request for an expedited external review. If the Commissioner has accepted the covered persons request for an expedited external review, then the Commissioner shall, in accordance with G.S. 58-50-80, assign an organization to conduct the review within the appropriate time frame. If the Commissioner has not accepted the covered person's request for an expedited external review, then the covered person shall be informed by the Commissioner that the covered person must exhaust the insurer's internal ~~grievance~~ appeal process under ~~G.S. 58-50-62~~ G.S. 58-50-61 to obtain the insurer's final appeal decision before making another request for an external review with the Commissioner.

c. For a request made pursuant to sub-subdivision (a)(3)a. of this section that the Commissioner has determined meets the reviewability requirements set forth in G.S. 58-50-80(b)(2), the Commissioner shall determine, based on medical advice from a medical professional who is not affiliated with the organization that will be assigned to conduct the external review of the request, whether the request should be reviewed on an expedited basis because the time frame for completion of a standard external review under G.S. 58-50-80 would reasonably be expected to seriously jeopardize the life or health of the

covered person or would jeopardize the covered person's ability to regain maximum function. The Commissioner shall then inform the covered person, the covered person's provider who performed or requested the service, and the insurer whether the review will be conducted using an expedited or standard time frame and shall, in accordance with G.S. 58-50-80, assign an organization to conduct the review within the appropriate time frame.

d. For a request made pursuant to sub-subdivision (a)(3)b. of this section, that the Commissioner has determined meets the reviewability requirements set forth in G.S. 58-50-80(b)(2), the Commissioner shall, in accordance with G.S. 58-50-80, assign an organization to conduct the expedited review and inform the covered person, the covered person's provider who performed or requested the service, and the insurer of its decision.

(c) As soon as possible, but within the same day of receiving notice under subdivision (b)(2) of this section that the request has been assigned to a review organization, the insurer or its designee utilization review organization shall provide or transmit all documents and information considered in making the noncertification appeal decision ~~or the second level grievance review decision~~ to the assigned review organization electronically or by telephone or facsimile or any other available expeditious method.

(d) In addition to the documents and information provided or transmitted under subsection (c) of this section, the assigned organization, to the extent the information or documents are available, shall consider the following in reaching a decision:

(1) The covered person's pertinent medical records.
(2) The attending health care provider's recommendation.
(3) Consulting reports from appropriate health care providers and other documents submitted by the insurer, covered person, or the covered person's treating provider.
(4) The most appropriate practice guidelines that are based on sound clinical evidence and that are periodically evaluated to assure ongoing efficacy.
(5) Any applicable clinical review criteria developed and used by the insurer or its designee utilization review organization in making noncertification decisions.
(6) Medical necessity, as defined in G.S. 58-3-200(b).
(7) Any documentation supporting the medical necessity and appropriateness of the provider's recommendation.

The assigned organization shall review the terms of coverage under the covered person's health benefit plan to ensure that the organization's decision shall not be contrary to the terms of coverage under the covered person's health benefit plan.

The assigned organization's determination shall be based on the covered person's medical condition at the time of the initial noncertification decision.

(e) As expeditiously as the covered person's medical condition or circumstances require, but not more than four days after the date of receipt of the request for an expedited external review, the assigned organization shall make a decision to uphold or reverse the ~~noncertification,~~ noncertification or noncertification appeal ~~decision, or second-level grievance review~~ decision and notify the covered person, the covered person's provider who performed or requested the service, the insurer, and the Commissioner of the decision. In reaching a decision, the assigned organization is not bound by any decisions or conclusions reached during the insurer's utilization review process or internal ~~grievance~~ appeal process under ~~G.S. 58-50-61 and G.S. 58-50-62.~~ G.S. 58-50-61.

(f) If the notice provided under subsection (e) of this section was not in writing, within two days after the date of providing that notice, the assigned organization shall provide written confirmation of the decision to the covered person, the covered person's provider who performed or requested the service, the insurer, and the Commissioner and include the information set forth in G.S. 58-50-80(m). Upon receipt of the notice of a decision under subsection (e) of this section that reverses the ~~noncertification,~~ noncertification or noncertification appeal decision, ~~or second-level grievance review decision,~~ the insurer shall within one day reverse the ~~noncertification,~~ noncertification or noncertification appeal ~~decision,~~ decision ~~or second-level grievance review decision~~ that was the subject of the review and shall provide coverage or payment for the requested health care service or supply that was the subject of the ~~noncertification,~~ noncertification or noncertification appeal ~~decision, or second-level grievance review~~ decision.

(g) An expedited external review shall not be provided for retrospective noncertifications."

SECTION 15. G.S. 58-50-84(c) reads as rewritten:

"(c) A covered person may not file a subsequent request for external review involving the same noncertification appeal decision ~~or second-level grievance review decision~~ for which the covered person has already received an external review decision under this Part."

SECTION 16. G.S. 58-50-90(c) reads as rewritten:

"(c) The report shall include in the aggregate and for each insurer:

(1) The total number of requests for external review.

(2) The number of requests for external review resolved and, of those resolved, the number resolved upholding the noncertification appeal decision ~~or second-level grievance review decision~~ and the number resolved reversing the noncertification appeal ~~decision or second-level grievance review~~ decision.

(3) The average length of time for resolution.

(4) A summary of the types of coverages or cases for which an external review was sought, as provided in the format required by the Commissioner.

(5) The number of external reviews under G.S. 58-50-80 that were terminated as the result of a reconsideration by the insurer of its

noncertification appeal decision ~~or second-level grievance review decision~~ after the receipt of additional information from the covered person.

(6) Any other information the Commissioner may request or require."

SECTION 17. G.S. 58-50-93(b) reads as rewritten:

"(b) The description required under subsection (a) of this section shall include a statement that informs the covered person of the right of the covered person to file a request for an external review of a ~~noncertification,~~ noncertification or noncertification appeal decision ~~or a second-level grievance review decision~~ upholding a noncertification with the Commissioner. The statement shall include the telephone number and address of the Commissioner."

SECTION 18. This act becomes effective March 1, 2004, and applies to all policies or certificates in effect, delivered, issued for delivery, or renewed on or after that effective date.

FORTIFY AGAINST UNAUTHORIZED INSURANCE: House Bill 1107

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Representative Connie Wilson
Date:	June 30, 2004	**Summary by:**	Kory J. Goldsmith KJG
Version:	H1107-RCS70480-LN-58		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute clarifies and increases the penalties for an insurance agent who solicits or sells insurance for an unauthorized insurer. It also puts stricter limits on which entities may sell insurance directly to a person in this State.***

The act becomes effective December 1, 2004 and applies to acts committed on or after that date.

CURRENT LAW:

G.S. 58-33-95 provides that any person representing an insurer is personally liable on all contracts of insurance unlawfully made by that person for a company that is not authorized to do business in North Carolina. It also provides that it is a Class 1 misdemeanor for that person to solicit or negotiate an insurance contract for an insurance company that is not licensed to do business in North Carolina. The sentence for a Class 1 misdemeanor for a person with no prior convictions is 1-45 days of community punishment.

G.S. 58-28-45(a) provides that it is unlawful for any person to act as agent, negotiate for or place insurance coverage for any insurer not authorized to transact business in this State. An unauthorized insurer is an insurer that is not licensed by the Commissioner of Insurance or otherwise permitted to transact insurance business in the State. A violation of this provision is a Class 3 misdemeanor with a mandatory fine of not less than $1,000 and not more than $5,000. The sentence for a Class 3 misdemeanor for a person with no prior convictions is 1-10 days of community punishment.

G.S. 58-33-46(a)(2) authorizes the Commissioner of Insurance to place on probation, suspend, revoke, or refuse to renew any insurance agent's license for a violation of the any insurance law.

As a general rule, an insurance company may not sell insurance in North Carolina without a license. There are two exceptions to this general rule. An unlicensed insurer may sell insurance in this State as a surplus lines insurer if it meets certain eligibility requirements. Even then, the insurer may only sell coverage for a risk if the applicant is unable to procure coverage from a licensed insurer. The other exception is known as 'direct procurement' and involves the sale of insurance without any agent or broker and allows an individual to directly procure insurance from an 'unauthorized insurer' which does not have to meet any statutory requirements.

BILL ANALYSIS:

Section 1 of the bill rewrites G.S. 58-33-95. It makes it clear that an agent is strictly liable, i.e., liable regardless of the presence or absence of negligence, for any losses or claims that are unpaid by an unauthorized insurer. It makes a violation a Class 1 misdemeanor if the insurance agent did not know the insurer is an unauthorized insurer. It makes it a Class F felony if the insurance agent knew the insurer was an unauthorized insurer. The presumptive sentence for a Class F felony for a person with no prior convictions is 13-16 months of intermediate to active punishment.

FORTIFY AGAINST UNAUTHORIZED INSURANCE

Section 2 makes soliciting, negotiating, or selling insurance for an unauthorized insurer grounds to revoke an insurance agent's license, regardless of whether the agent knew that the insurer was an unauthorized insurer.

Section 3 clarifies that the higher penalties of G.S. 58-33-95 apply when a person solicits or negotiates an insurance contract for an unauthorized insurer.

Section 4 amends G.S. 58-28-5(b) to restrict which entities may directly sell insurance to a person in this State. It would require that only eligible surplus line insurers would qualify for this exception.

BACKGROUND: The bill comes at the request of the Department of Insurance and in response to a recent incident in which a group of North Carolina physicians procured professional liability insurance from an unauthorized insurer that did not have the financial resources to pay claims.

H1107-SMRC-003

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1107

Committee Substitute Favorable 5/1/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H1107-PCS70480-LN-58

Short Title: Fortify Against Unauthorized Insurance. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CIVIL LIABILITY AND INCREASE THE CRIMINAL PENALTY FOR PERSONS WHO REPRESENT UNAUTHORIZED INSURERS AND TO PROVIDE THAT SUCH ACTIVITY IS GROUNDS FOR REVOCATION OF THE LICENSE OF THE INSURANCE AGENT OR BROKER; AND TO LIMIT DIRECT PROCUREMENT OF INSURANCE ONLY THROUGH ELIGIBLE SURPLUS LINES INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-33-95 reads as rewritten:

"**§ 58-33-95. Agents personally liable; representing unlicensed company prohibited; penalty.**

(a) Any person ~~representing an insurer is personally liable on all contracts of insurance unlawfully made by or through him, directly or indirectly, for any company not authorized to do business in the State. A person or citizen of the State who fills up or signs any open policy, certificate, blank or coupon of, or furnished by, an unlicensed company, agent, broker or limited representative, the effect of which is to bind any insurance in an unlicensed company on property in this State, is the representative of such company, and personally liable for all licenses and taxes due on account of such transaction. If any person shall unlawfully solicit, negotiate for, collect or transmit a premium for a contract of insurance or act in any way in the negotiation or transaction of any unlawful insurance with an insurance company not licensed to do an insurance business in North Carolina, he shall be guilty of a Class 1 misdemeanor.~~ or entity who solicits, negotiates, or sells insurance in this State for an unauthorized insurer:

(1) Is the representative of that insurer and shall be strictly liable for any losses or unpaid claims if an unauthorized insurer fails to pay in full or in part any claim or loss within the provisions of any insurance

contract sold, directly or indirectly, by or through that person or entity on behalf of the unauthorized insurer.

(2) Shall be guilty of a Class 1 misdemeanor if the person or entity does not know that the insurer is an unauthorized insurer. Each solicitation, negotiation, or sale shall constitute a separate offense.

(3) Shall be guilty of a Class H felony if the person or entity knows that the insurer is an unauthorized insurer. Each solicitation, negotiation, or sale shall constitute a separate offense.

(b) A civil action may be filed or a license revocation proceeding may be initiated under this section regardless of whether a criminal action is brought or a criminal conviction is obtained for the act alleged in the civil action or revocation proceeding.

(c) As used in this section, the terms "negotiate", "sell", and "solicit" shall have the meanings set forth in G.S. 58-33-10. As used in this section, the status of an entity or person as an "unauthorized insurer" shall be determined in accordance with Article 28 of this Chapter and, if applicable, Article 49 of this Chapter."

SECTION 2. G.S. 58-33-46(a) is amended by adding a new subdivision to read:

"(12a) Soliciting, negotiating, or selling insurance in this State for an unauthorized insurer, regardless of whether the licensee or applicant knew that the insurer was unauthorized. As used in this section, the terms "soliciting", "negotiating", and "selling" shall have the meaning of "solicit", "negotiate", and "sell", respectively, set forth in G.S. 58-33-10."

SECTION 3. G.S. 58-28-45(h) reads as rewritten:

"(h) ~~Any~~ Except as provided in G.S. 58-33-95, any person, corporation, association or partnership violating any of the provisions of this section shall be guilty of a Class 3 misdemeanor and shall only be fined not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000)."

SECTION 4. G.S. 58-28-5(b) reads as rewritten:

"(b) Any person in this State may directly procure or directly renew insurance with an ~~unlicensed insurer~~ eligible surplus lines insurer, as defined in G.S. 58-21-10(3), without the involvement of an agent, broker, or surplus lines licensee, on a risk located or to be performed, in whole or in part, in this State. The person shall, within 30 days after the date the insurance is procured or renewed, file a written report with the Commissioner on forms prescribed by the Commissioner. The report must contain the name and address of the insured; name and address of the insurer; the subject of insurance; a general description of the coverage; the amount of premium currently charged; and any additional information requested by the Commissioner. The report must also contain an affidavit of the insured that states that the full amount or kind of insurance cannot be obtained from insurers that are ~~admitted~~ licensed to do business in this State; and that the insured has made a diligent search among the insurers that are ~~admitted~~ licensed to transact and are actually writing the particular kind and class of insurance in this State. Gross premiums charged for the insurance, less any return

premiums, are subject to a tax at the rate of five percent (5%). At the time of filing the report required by this subsection, the insured shall pay the tax to the Commissioner. The Commissioner has the powers specified in G.S. 58-21-90 with respect to the tax levied by this subsection."

SECTION 5. This act becomes effective December 1, 2004, and applies to act committed on or after that date.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 30, 2004

TO: **Representative C. Wilson**

FROM: Douglas Holbrook
Fiscal Research Division

RE: House Bill 1107-PCS70480-LN-58

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (x)**

	FY 2004-05	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09
REVENUES					
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance, Administrative Office of the Courts, Department of Correction.

EFFECTIVE DATE: upon ratification

BILL SUMMARY: **Section 1.** (amending G.S. 58-33-95):Clarifies that an agent is strictly liable for any losses or claims unpaid if the agent sells or offers to sell insurance for an unauthorized insurer and the insurer fails to pay, in full or in part, any valid claim or loss.

- Specifically provides that selling or offering to sell insurance for an unauthorized insurer is grounds for revocation of the agent's license.
- Increases to a Class H felony the criminal penalty for an agent who *knowingly* sells insurance for an unauthorized insurer. Under existing law, it is a Class 1 misdemeanor to sell insurance for an unauthorized insurer, regardless of the agent's knowledge.

Section 2. Makes conforming changes to G.S. 58-28-45(h).

Section 3. (amending G.S. 58-28-5) More strictly limits which entities may directly sell insurance to a person in this State. In general, an insurance company cannot sell insurance in this State without a license. However, an unlicensed insurer may sell insurance in this State as a surplus lines insurer if it meets certain eligibility requirements. Even then, such insurers may only sell coverage for a risk if the applicant is unable to procure coverage from a licensed insurer. One exception to these laws involves the sale of insurance without the use of an agent or broker ("direct procurement"). Currently, a person can directly procure from any "unauthorized insurer". Under this exception, a person can directly buy "insurance" from an entity that does not even have to meet any statutory requirements. The opportunity for rogue entities to enter this arena is substantial. The proposed change would shut down this avenue for possible fraud by limiting direct procurement only to eligible surplus lines insurers, which must, at least, meet financial and other standards in Article 21 of Chapter 58.

ASSUMPTIONS AND METHODOLOGY:

This bill requires a fiscal note because it includes criminal penalties. Any bill with a potential impact on the state's prison population must have a fiscal note. For this memorandum, the bill's impact on judicial and prison resources will be the focus; the Department of Insurance feels that this bill's requirements are within their current resources.

Judicial Department

The Administrative Office of the Courts currently does not have an offense code for GS 58-33-95, an indicator that relatively few charges occur. We have no data from which to estimate the number of additional charges that would arise from this amendment. We expect the enhancement in punishment to be accompanied in some cases by a more vigorous defense and prosecution, resulting in more court time and costs to dispose of these cases. The attached costs sheets indicate a $3,000 difference in cost between a Class H felony trial and a Class 1 misdemeanor trial, and a $76 difference in cost between a Class H felony plea and a Class 1 misdemeanor plea. AOC has no data from which to estimate the number of new civil actions or license revocation proceedings that would arise from this provision. Depending on the number and complexity of these cases, the impact on the court system could be substantial.

These amendments can be expected to increase the workload of district and superior court judges, district attorneys, clerks, and court reporters. There would also be an increase in expenses for jury fees and indigent defense.

This bill expands current GS 58-33-46(a) by adding to this list of violations the act of soliciting, negotiating, or selling insurance for an unauthorized insurer, regardless of whether the licensee knew that the insurer was unauthorized.

This provision can be expected to result in increased enforcement and court actions appealing enforcement actions. AOC has no data from which to estimate the number of such matters or the impact on the courts. Depending on the number and complexity of such proceedings, the court impact could be significant.

Department of Correction
Since this bill creates a new offense, the Sentencing Commission does not have any historical data from which to estimate its impact on the prison population. It is not known how many offenders might be convicted and sentenced for the proposed offense. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

This bill retains the current Class 1 misdemeanor under G.S. 58-33-95 but limits it to if the person does not know the insurer is not authorized to do business in North Carolina. The Administrative Office of the Courts (AOC) currently does not have a specific offense code for violations of G.S. 58-33-95. The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions.

SOURCES OF DATA: Administrative Office of the Courts; Sentencing Commission.

TECHNICAL CONSIDERATIONS:

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7/1/2004

S. B. No. _____ Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X H1107-PCS70480-LN-58

Rep.) Sen.) Rand

1 moves to amend the bill on page 2, line 6

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the word "knows" to

4 "knew or should have known".

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SIGNED Tony Rand

ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 1107

Committee Substitute Favorable 5/1/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H1107-PCS30570-LN-59

Short Title: Fortify Against Unauthorized Insurance. (Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CIVIL LIABILITY AND INCREASE THE CRIMINAL PENALTY FOR PERSONS WHO REPRESENT UNAUTHORIZED INSURERS AND TO PROVIDE THAT SUCH ACTIVITY IS GROUNDS FOR REVOCATION OF THE LICENSE OF THE INSURANCE AGENT OR BROKER; AND TO LIMIT DIRECT PROCUREMENT OF INSURANCE ONLY THROUGH ELIGIBLE SURPLUS LINES INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-33-95 reads as rewritten:

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(1) Is the representative of that insurer and shall be strictly liable for any losses or unpaid claims if an unauthorized insurer fails to pay in full or in part any claim or loss within the provisions of any insurance

contract sold, directly or indirectly, by or through that person or entity on behalf of the unauthorized insurer.

(2) Shall be guilty of a Class 1 misdemeanor if the person or entity does not know that the insurer is an unauthorized insurer. Each solicitation, negotiation, or sale shall constitute a separate offense.

(3) Shall be guilty of a Class H felony if the person or entity knew or should have known that the insurer is an unauthorized insurer. Each solicitation, negotiation, or sale shall constitute a separate offense.

(b) A civil action may be filed or a license revocation proceeding may be initiated under this section regardless of whether a criminal action is brought or a criminal conviction is obtained for the act alleged in the civil action or revocation proceeding.

(c) As used in this section, the terms "negotiate", "sell", and "solicit" shall have the meanings set forth in G.S. 58-33-10. As used in this section, the status of an entity or person as an "unauthorized insurer" shall be determined in accordance with Article 28 of this Chapter and, if applicable, Article 49 of this Chapter."

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SECTION 3. G.S. 58-28-45(h) reads as rewritten:

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premiums, are subject to a tax at the rate of five percent (5%). At the time of filing the report required by this subsection, the insured shall pay the tax to the Commissioner. The Commissioner has the powers specified in G.S. 58-21-90 with respect to the tax levied by this subsection."

SECTION 5. This act becomes effective December 1, 2004, and applies to acts committed on or after that date.



Business

Posted on Sat, May. 15, 2004

OBSERVER WATCHDOG

Home insurance question? Don't ask

Queries to insurance companies can raise your rates

MARK JOHNSON
Raleigh Bureau

Charlotte lawyer Spencer Alridge woke up to the sound of his toilet overflowing and, later, to the fact that insurance companies are penalizing customers just for asking a question.

It's a practice that N.C. and S.C. state lawmakers want to rein in.

Alridge's middle-of-the-night spillover, caused by a failing flush valve, put water on the floor and dripped a small amount through a light fixture in the room below in their Lake Park house, in Union County. His wife, Denise, called their insurance agent the next morning to ask what their options were.



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The spill turned out to be harmless. No claim was filed. No work was done. No adjuste house. No money was paid.

That was a couple of years ago.

Last summer, the couple sold their house and, 10 days before the closing, the buyer's with a snag. The buyer was told that homeowner's insurance would cost much more t because of the "water damage" at the house.

"I asked what the heck she was talking about," Alridge said.

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His wife's phone call to the insurance agent had been recorded in a database that cont of the insurance claims filed in the United States and is used throughout the insurance called CLUE, Comprehensive Loss Underwriting Exchange. The Alridges were listed as claim but without any money being paid out.

Not every insurance company handles questions that way, but the practice of recordin claims is "widespread," according to Chrissy Pearson, spokeswoman for the N.C. Insur Department.

"That's where it starts getting ugly for consumers. It starts getting unfair for consume said. "It seems like the companies are getting a bit greedy with that."

Mark Dombrowski, spokesman for Erie Insurance Group, which held Alridge's policy, d that specific case, but said the company must react when they get a call.

"If a policy holder calls and reports the possibility of a claim, it triggers action on our p Dombrowski said. "In other words, we have to consider there may be a loss. We have funds.... We're tracking the activities on our part. I think that's a pretty standard prac

Alridge said Erie deleted the claim after he threatened to handle his own lawsuit again

Neither the N.C. nor S.C. insurance departments have any kind of list of which compa have reported inquiries as claims.

S.C. legislators, at the urging of the insurance department, proposed legislation earlie prohibiting insurance companies from denying renewal of a policy that is in any way b inquiries. That bill is still in committee.

In North Carolina, Rep. Hugh Holliman, D-Davidson, who co-chairs the House Insuran denounced the use of the database to record questions. He said this year's "short" Ge session did not allow time for dealing with much more than the budget, but he wants t issue when lawmakers return in January.

"The industry...should not be abusing consumers in this fashion," said Sen. Marc Basn pro tem of the N.C. Senate. He said his office is researching solutions. "We're going to to fix it," he said.

The company that maintains the CLUE database, ChoicePoint, in Alpharetta, Ga., know inaccurate reports.

"That has become a problem," said spokesman Chuck Jones. "Many companies were i mere inquiries into the database."

Last year, the firm dispatched a letter to insurance companies warning that "Claims in should *not* be reported when a customer merely asks questions about their coverage c

The N.C. Insurance Department still gets three or four complaints a month about the (but has not yet established a separate category for those problems in order to keep a count.

How insurers handle questions from customers "varies from company to company and agent," said Ray Evans, general manager for the N.C. Rate Bureau, a partnership of in

companies, created by law, that proposes rates for insurance in North Carolina subject commissioner's approval.

Alridge's insurance agency, Allen Insurance Group, said they work hard to avoid the c

"We try to make it clear, `Do you want to file a claim or are you just trying to get info Fenn Allen, the agency's owner.

Insurance industry officials said the 10-year-old database, when used properly, helps out fraud and set premiums. CLUE holds records for an estimated 170 million auto clai million homeowner claims that go back five years. Before the database, insurers did n exchange information about customers and had no easy way of knowing whether a pr customer had a lengthy history of claims.

A scam artist, for example, may have filed claims for stolen jewelry from five different five years. Jones, of ChoicePoint, said insurance is priced based on risk, and it's not fa everybody the same.

"Somebody who rarely files a claim ought to pay less of a premium than someone wh files claims," he said.

The related, but equally unpleasant, surprise consumers run into with CLUE is that ins using the database to examine a house or a building as much as the individual who ov buyers may be about to close a deal and then find that they can't get insurance, or it's expensive, because the current owner or a previous owner filed claims.

This is especially true of water damage, given the recent trend of lawsuits over exposu buildings.

Realtors "have not been aware of these issues," said Stuart Powell, vice president of t Insurance Agents of North Carolina. "Realtors are beginning to get the idea of having t produce a CLUE report."

Mark Johnson: (704) 358-5941 or mjohnson@charlotteobserver.com.

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SENATE BILL 486:
Customer Inquiries/Insurance Coverage

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	
Date:	June 16, 2004	**Summary by:**	Tim Hovis
Version:	4th Edition		Committee Counsel

BACKGROUND: Databases of property loss or claims history are used by insurers to track an insured's insurance history and provide or rate coverage according to that history. These databases include the Comprehensive Loss Underwriting Exchange (CLUE) and the Automated Property Loss Underwriting System (A-PLUS). Recent reports have indicated that an inquiry by an insured may be included in these databases and, in some cases, may have a negative impact on an insured's ability to obtain or continue coverage, even if the insured did not file a claim.

SUMMARY: Senate Bill 486 would prohibit residential real property insurers from terminating a policy or any coverage under the policy, refusing to write or renew a policy, or subjecting a policy to a consent to rate based solely on either of the following:

(1) An inquiry concerning coverage that did not result in a claim; or

(2) A claim that was closed and not paid by the insurer, provided the notice of the loss was only an inquiry regarding coverage and no claim for payment was made by the insured or a third party.

EFFECTIVE DATE: Senate 486 would become effective October 1, 2004 and applies to policies issued or renewed on or after that date.

HOUSE BILL 173:
Cosmetic Art/Continuing Ed/Penalty Change.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Howard
Date:	July 1, 2004	**Summary by:**	Karen Cochrane Brown
Version:	Proposed Committee Substitute H173-CSLA-70[v.2]		Committee Co-Counsel

SUMMARY: House Bill 173 amends the Cosmetic Art Act as follows:

- *Requires a teacher, cosmetologist, esthetician, or manicurist to annually complete 8 hours of Board-approved continuing education for each year of the licensing cycle.*
- *Allows a cosmetologist to complete up to 24 hours of the required continuing education at any time within the cosmetologist's three-year licensing cycle.*
- *Allows the promotion of products and systems at continuing education programs given in-house or at trade shows*
- *Provides that continuing education classes will also be offered in secondary languages as needed.*
- *Exempts a licensee, other than a licensed cosmetic arts teacher, from the continuing education requirements if the licensee meets ALL of the following conditions:*
  1. *Is in active practice as a cosmetologist, esthetician, or manicurist*
  2. *Has practiced for at least 5 consecutive years as a cosmetologist, esthetician, or manicurist*
  3. *Is 55 or older*
- *Deletes the current requirement that a licensee, who fails to renew his or her license within five years following expiration, must first pay the license fee for each year that the fees are delinquent before the license is reinstated.*
- *Authorizes the Board to establish an inactive list of licensees and exempts inactive persons from the continuing education requirements.*
- *Clarifies that the proceeds of any civil penalty will be remitted to the civil Penalty and Forfeiture Fund established by the General Assembly.*

The proposed committee substitute changes the effective date and makes clarifying and technical changes.

BILL ANALYSIS: Under current law, a cosmetology teacher, esthetician teacher, or a manicurist teacher must annually complete a minimum of eight hours of Board-approved continuing education before the teacher's license may be renewed. Licensed cosmetologists, estheticians, and manicurists are not required to complete continuing education. House Bill 173 would require a cosmetologist, esthetician, or manicurist, as well as a teacher, to complete eight hours of Board-approved continuing education for each year of the licensing cycle.[1] The bill

[1] Cosmetologists' licenses must be renewed every three years. Teacher licenses must be renewed every two years. Esthetician and manicurist licenses must be renewed annually.

also exempts the following licensees from the continuing education requirements, unless the person is a teacher: a licensee who (1) is in active practice as a cosmetologist, esthetician, or manicurist, (2) has practiced for at least five consecutive years as a cosmetologist, esthetician, or manicurist, and (3) is at least 55 years old.

House Bill 173 requires that continuing education classes will also be offered in secondary languages as needed, and allows the promotion of products and systems when continuing education classes are given in-house or at trade shows.

House Bill 173 authorizes the Board to establish an inactive list of licensees. The inactive licensee must be in good standing with the Board and may not practice cosmetic art for consideration. The inactive licensee is not required to complete continuing education requirements and may continue to purchase supplies as accorded an active licensee. The licensee must notify the Board when he or she desires to return to active status, pay the required fee, and complete any continuing education required by the Board.

House Bill 173 clarifies that the proceeds of any civil penalty assessed by the Board will be remitted to the Civil Penalty and Forfeiture Fund. This Fund is administered by the Office of State Budget and Management and consists of all civil penalties and civil forfeitures collected by a State agency. These proceeds are transferred to the State School Technology Fund and allocated to local school administrative units on the basis of average daily membership.

The provision of this act relating to civil penalties would become effective when it becomes law and would apply to violations occurring on or after that date. The remainder of the act would become effective October 1, 2004.

H173-SMRO-001

Martha Walston, House Finance Committee Counsel, contributed significantly to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

S 4

SENATE BILL 486

Judiciary II Committee Substitute Adopted 4/14/03
House Committee Substitute Favorable 6/3/04
House Committee Substitute #2 Favorable 6/21/04

Short Title: Customer Inquiries/Insurance Coverage. (Public)

Sponsors:

Referred to:

March 20, 2003

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT INSURANCE COMPANIES FROM USING CUSTOMER INQUIRIES TO TERMINATE A POLICY, TO REFUSE TO ISSUE OR RENEW A POLICY, OR TO SUBJECT A POLICY TO CONSENT TO RATE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-115. Prohibitions on using inquiries to terminate a policy, refuse to issue or renew a policy, or to subject a policy to consent to rate.**

An insurer writing residential real property insurance subject to this Article shall not terminate an existing policy or any coverage under an existing policy, refuse to write a policy, refuse to renew a policy, or subject a policy to consent to rate as specified in G.S. 58-36-30(b) based solely on either of the following:

(1) An inquiry about policy provisions that does not result in a claim; or

(2) A claim that was closed without payment, provided the notice of loss that was the subject of the claim was only an inquiry regarding policy provisions, and no claim for payment was requested by the insured or a third party."

SECTION 2. This act becomes effective October 1, 2004, and applies to policies issued or renewed on or after that date.

SENATE BILL 486:
Customer Inquiries/Insurance Coverage

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	
Date:	June 16, 2004	**Summary by:**	Tim Hovis
Version:	4th Edition		Committee Counsel

BACKGROUND: Databases of property loss or claims history are used by insurers to track an insured's insurance history and provide or rate coverage according to that history. These databases include the Comprehensive Loss Underwriting Exchange (CLUE) and the Automated Property Loss Underwriting System (A-PLUS). Recent reports have indicated that an inquiry by an insured may be included in these databases and, in some cases, may have a negative impact on an insured's ability to obtain or continue coverage, even if the insured did not file a claim.

SUMMARY: Senate Bill 486 would prohibit residential real property insurers from terminating a policy or any coverage under the policy, refusing to write or renew a policy, or subjecting a policy to a consent to rate based solely on either of the following:

(1) An inquiry concerning coverage that did not result in a claim; or

(2) A claim that was closed and not paid by the insurer, provided the notice of the loss was only an inquiry regarding coverage and no claim for payment was made by the insured or a third party.

EFFECTIVE DATE: Senate 486 would become effective October 1, 2004 and applies to policies issued or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 173

Committee Substitute Favorable 7/8/03
Third Edition Engrossed 7/10/03

Short Title: Cosmetic Art/Continuing Ed/Penalty Change. (Public)

Sponsors:

Referred to:

March 3, 2003

A BILL TO BE ENTITLED

AN ACT REQUIRING THE CONTINUING EDUCATION OF PERSONS PRACTICING UNDER THE COSMETIC ART ACT AND CLARIFYING THE REMITTANCE OF CIVIL PENALTIES UNDER THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 88B-21 reads as rewritten:

"**§ 88B-21. Renewals; expired ~~licenses.~~licenses; inactive status.**

(a) Each license to operate a cosmetic art shop shall be renewed on or before the first day of February of each year. As provided in G.S. 88B-20, a late fee shall be charged for licenses renewed after February 1. Any license not renewed by March 1 of each year shall expire. A cosmetic art shop whose license has been expired for one year or less shall have the license reinstated immediately upon payment of the reinstatement fee, the late fee, and all unpaid license fees. The licensee shall submit to the Board, as a part of the renewal process, a list of all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(b) Cosmetologist licenses shall be renewed on or before October 1 every three years beginning October 1, 1998. A late fee shall be charged for renewals after that date. Any license not renewed shall expire on October 1 of the year that renewal is required. The Board may develop and implement a plan for staggered license renewal and may prorate license fees to implement such a plan.

(c) Apprentice, esthetician, and manicurist licenses shall be renewed annually on or before October 1 of each year. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(d) Teacher licenses shall be renewed every two years on or before October 1. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(e) Prior to renewal of a ~~teacher's~~ license, ~~the teacher~~ a teacher, cosmetologist, esthetician, or manicurist shall annually complete ~~a minimum of~~ eight hours of Board-

approved continuing education ~~which shall be approved by the Board. Teachers~~ for each year of the licensing cycle. A cosmetologist may complete up to 24 hours of required continuing education at any time within the cosmetologist's three-year licensing cycle. Licensees shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection. Promotion of products and systems shall be allowed at continuing education given in-house or at trade shows. A licensee who is in active practice as a cosmetologist, esthetician, or manicurist, has practiced for at least five consecutive years as a cosmetologist, esthetician, or manicurist, and is 55 years of age or older does not have to meet the continuing education requirements of this subsection, unless the licensee is a cosmetology teacher. Continuing education classes will also be offered in secondary languages as needed.

(f) If an apprentice, cosmetologist, esthetician, manicurist, or teacher fails to renew his or her license within five years following the expiration date, the licensee shall be required ~~to pay the license fee for each year that the fees are delinquent~~ and to pass an examination as prescribed by the Board before the license will be reinstated.

(g) Cosmetic art school licenses shall be renewed on or before October 1 of each year. A late fee shall be charged for licenses renewed after that date. Any license not renewed by November 1 of that year shall expire. A cosmetic art school whose license has been expired for one year or less shall have its license reinstated upon payment of the reinstatement fee, the late fee, and all unpaid license fees.

(h) Upon request by a licensee for inactive status, the Board may place the licensee's name on the inactive list so long as the licensee is in good standing with the Board. An inactive licensee is not required to complete continuing education requirements. An inactive licensee shall not practice cosmetic art for consideration. However, the inactive licensee may continue to purchase supplies as accorded an active licensee. When the inactive licensee desires to be removed from the inactive list and return to active practice, the inactive licensee shall notify the Board of his or her desire to return to active status and pay the required fee as determined by the Board. As a condition of returning to active status, the Board may require the licensee to complete eight to 24 hours of continuing education pursuant to subsection (e) of this section."

SECTION 2. G.S. 88B-29(a) reads as rewritten:

"(a) Authority to Assess Civil Penalties. – In addition to taking any of the actions permitted under G.S. 88B-24, the Board may assess a civil penalty not in excess of one thousand dollars ($1,000) for the violation of any section of this Chapter or the violation of any rules adopted by the Board. ~~All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred.~~ The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 3. Section 1 of this act becomes effective October 1, 2003. Section 2 of this act is effective when it becomes law and applies to violations occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 173
Committee Substitute Favorable 7/8/03
Third Edition Engrossed 7/10/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H173-CSLA-70 [v.2]

6/30/2004 1:40:45 PM

Short Title: Cosmetic Art/Continuing Ed/Penalty Change. (Public)

Sponsors:

Referred to:

March 3, 2003

A BILL TO BE ENTITLED

AN ACT REQUIRING THE CONTINUING EDUCATION OF PERSONS PRACTICING UNDER THE COSMETIC ART ACT AND CLARIFYING THE REMITTANCE OF CIVIL PENALTIES UNDER THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 88B-21 reads as rewritten:

"**§ 88B-21. Renewals; expired ~~licenses.~~licenses; inactive status.**

(a) Each license to operate a cosmetic art shop shall be renewed on or before the first day of February of each year. As provided in G.S. 88B-20, a late fee shall be charged for licenses renewed after February 1. Any license not renewed by March 1 of each year shall expire. A cosmetic art shop whose license has been expired for one year or less shall have the license reinstated immediately upon payment of the reinstatement fee, the late fee, and all unpaid license fees. The licensee shall submit to the Board, as a part of the renewal process, a list of all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(b) Cosmetologist licenses shall be renewed on or before October 1 every three years beginning October 1, 1998. A late fee shall be charged for renewals after that date. Any license not renewed shall expire on October 1 of the year that renewal is required. The Board may develop and implement a plan for staggered license renewal and may prorate license fees to implement such a plan.

(c) Apprentice, esthetician, and manicurist licenses shall be renewed annually on or before October 1 of each year. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(d) Teacher licenses shall be renewed every two years on or before October 1. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(e) Prior to renewal of a ~~teacher's~~ license, ~~the teacher~~ a cosmetologist, esthetician, or manicurist shall annually complete ~~a minimum of~~ eight hours of Board-approved continuing education ~~which shall be approved by the Board. Teachers~~ for each year of the licensing cycle. A cosmetologist may complete up to 24 hours of required continuing education at any time within the cosmetologist's three-year licensing cycle. Licensees shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection. Promotion of products and systems shall be allowed at continuing education given in-house or at trade shows. A licensee who is in active practice as a cosmetologist, esthetician, or manicurist, has practiced for at least five consecutive years as a cosmetologist, esthetician, or manicurist, and is 55 years of age or older does not have to meet the continuing education requirements of this subsection, unless the licensee is a cosmetic art teacher. Continuing education classes will also be offered in secondary languages as needed.

(f) If an apprentice, cosmetologist, esthetician, manicurist, or teacher fails to renew his or her license within five years following the expiration date, the licensee shall be required ~~to pay the license fee for each year that the fees are delinquent and~~ to pass an examination as prescribed by the Board before the license will be reinstated.

(g) Cosmetic art school licenses shall be renewed on or before October 1 of each year. A late fee shall be charged for licenses renewed after that date. Any license not renewed by November 1 of that year shall expire. A cosmetic art school whose license has been expired for one year or less shall have its license reinstated upon payment of the reinstatement fee, the late fee, and all unpaid license fees.

(h) Upon request by a licensee for inactive status, the Board may place the licensee's name on the inactive list so long as the licensee is in good standing with the Board. An inactive licensee is not required to complete continuing education requirements. An inactive licensee shall not practice cosmetic art for consideration. However, the inactive licensee may continue to purchase supplies as accorded an active licensee. When the inactive licensee desires to be removed from the inactive list and return to active practice, the inactive licensee shall notify the Board of his or her desire to return to active status and pay the required fee as determined by the Board. As a condition of returning to active status, the Board may require the licensee to complete eight to 24 hours of continuing education pursuant to subsection (e) of this section."

SECTION 2. G.S. 88B-29(a) reads as rewritten:

"(a) Authority to Assess Civil Penalties. – In addition to taking any of the actions permitted under G.S. 88B-24, the Board may assess a civil penalty not in excess of one thousand dollars ($1,000) for the violation of any section of this Chapter or the violation of any rules adopted by the Board. ~~All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred.~~ The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 3. Section 1 of this act becomes effective October 1, 2004. Section 2 of this act is effective when it becomes law and applies to violations occurring on or after that date.

HOUSE BILL 173:
Cosmetic Art/Continuing Ed/Penalty Change.

BILL ANALYSIS

Committee:	Senate Commerce	**Introduced by:**	Rep. Howard
Date:	July 1, 2004	**Summary by:**	Karen Cochrane Brown
Version:	Proposed Committee Substitute H173-CSLA-70[v.2]		Committee Co-Counsel

SUMMARY: House Bill 173 amends the Cosmetic Art Act as follows:

- *Requires a teacher, cosmetologist, esthetician, or manicurist to annually complete 8 hours of Board-approved continuing education for each year of the licensing cycle.*
- *Allows a cosmetologist to complete up to 24 hours of the required continuing education at any time within the cosmetologist's three-year licensing cycle.*
- *Allows the promotion of products and systems at continuing education programs given in-house or at trade shows*
- *Provides that continuing education classes will also be offered in secondary languages as needed.*
- *Exempts a licensee, other than a licensed cosmetic arts teacher, from the continuing education requirements if the licensee meets ALL of the following conditions:*
  1. *Is in active practice as a cosmetologist, esthetician, or manicurist*
  2. *Has practiced for at least 5 consecutive years as a cosmetologist, esthetician, or manicurist*
  3. *Is 55 or older*
- *Deletes the current requirement that a licensee, who fails to renew his or her license within five years following expiration, must first pay the license fee for each year that the fees are delinquent before the license is reinstated.*
- *Authorizes the Board to establish an inactive list of licensees and exempts inactive persons from the continuing education requirements.*
- *Clarifies that the proceeds of any civil penalty will be remitted to the civil Penalty and Forfeiture Fund established by the General Assembly.*

The proposed committee substitute changes the effective date and makes clarifying and technical changes.

BILL ANALYSIS: Under current law, a cosmetology teacher, esthetician teacher, or a manicurist teacher must annually complete a minimum of eight hours of Board-approved continuing education before the teacher's license may be renewed. Licensed cosmetologists, estheticians, and manicurists are not required to complete continuing education. House Bill 173 would require a cosmetologist, esthetician, or manicurist, as well as a teacher, to complete eight hours of Board-approved continuing education for each year of the licensing cycle.[1] The bill

[1] Cosmetologists' licenses must be renewed every three years. Teacher licenses must be renewed every two years. Esthetician and manicurist licenses must be renewed annually.

also exempts the following licensees from the continuing education requirements, unless the person is a teacher: a licensee who (1) is in active practice as a cosmetologist, esthetician, or manicurist, (2) has practiced for at least five consecutive years as a cosmetologist, esthetician, or manicurist, and (3) is at least 55 years old.

House Bill 173 requires that continuing education classes will also be offered in secondary languages as needed, and allows the promotion of products and systems when continuing education classes are given in-house or at trade shows.

House Bill 173 authorizes the Board to establish an inactive list of licensees. The inactive licensee must be in good standing with the Board and may not practice cosmetic art for consideration. The inactive licensee is not required to complete continuing education requirements and may continue to purchase supplies as accorded an active licensee. The licensee must notify the Board when he or she desires to return to active status, pay the required fee, and complete any continuing education required by the Board.

House Bill 173 clarifies that the proceeds of any civil penalty assessed by the Board will be remitted to the Civil Penalty and Forfeiture Fund. This Fund is administered by the Office of State Budget and Management and consists of all civil penalties and civil forfeitures collected by a State agency. These proceeds are transferred to the State School Technology Fund and allocated to local school administrative units on the basis of average daily membership.

The provision of this act relating to civil penalties would become effective when it becomes law and would apply to violations occurring on or after that date. The remainder of the act would become effective October 1, 2004.

H173-SMRO-001

Martha Walston, House Finance Committee Counsel, contributed significantly to this summary.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 3d

H. B. No. 173

S. B. No. _____

COMMITTEE SUBSTITUTE ✓

DATE 7/1/04

Amendment No. 1
(to be filled in by Principal Clerk)

Rep.)
Sen.) Rand

moves to amend the bill on page 2, line 8-12,

( ) WHICH CHANGES THE TITLE

by deleting the sentence that begins with the words "A licensee" and ends with the words "cosmetic art teacher." ;

and on page 2, line 13,

by deleting the word "will" and substituting the word "~~will~~ may".

SIGNED Tay Rand

ADOPTED X FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 3d

H. B. No. 173 DATE 7/1/04

S. B. No. Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Rand
Sen.)

moves to amend the bill on page 2, line 13

( ) WHICH CHANGES THE TITLE

by adding the following at the end of the line:

"No member of the Board may offer continuing education courses as required by this section."

SIGNED Tony Rand

ADOPTED X FAILED TABLED

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 173

Committee Substitute Favorable 7/8/03

Third Edition Engrossed 7/10/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H173-PCS70491-RO-44

Short Title: Cosmetic Art/Continuing Ed/Penalty Change. (Public)

Sponsors:

Referred to:

March 3, 2003

A BILL TO BE ENTITLED

AN ACT REQUIRING THE CONTINUING EDUCATION OF PERSONS PRACTICING UNDER THE COSMETIC ART ACT AND CLARIFYING THE REMITTANCE OF CIVIL PENALTIES UNDER THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 88B-21 reads as rewritten:

"**§ 88B-21. Renewals; expired ~~licenses.~~licenses; inactive status.**

(a) Each license to operate a cosmetic art shop shall be renewed on or before the first day of February of each year. As provided in G.S. 88B-20, a late fee shall be charged for licenses renewed after February 1. Any license not renewed by March 1 of each year shall expire. A cosmetic art shop whose license has been expired for one year or less shall have the license reinstated immediately upon payment of the reinstatement fee, the late fee, and all unpaid license fees. The licensee shall submit to the Board, as a part of the renewal process, a list of all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(b) Cosmetologist licenses shall be renewed on or before October 1 every three years beginning October 1, 1998. A late fee shall be charged for renewals after that date. Any license not renewed shall expire on October 1 of the year that renewal is required. The Board may develop and implement a plan for staggered license renewal and may prorate license fees to implement such a plan.

(c) Apprentice, esthetician, and manicurist licenses shall be renewed annually on or before October 1 of each year. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(d) Teacher licenses shall be renewed every two years on or before October 1. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(e) Prior to renewal of a ~~teacher's~~ license, ~~the teacher~~ a teacher, cosmetologist, esthetician, or manicurist shall annually complete ~~a minimum of~~ eight hours of Board-approved continuing education ~~which shall be approved by the Board. Teachers~~ for each year of the licensing cycle. A cosmetologist may complete up to 24 hours of required continuing education at any time within the cosmetologist's three-year licensing cycle. Licensees shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection. Promotion of products and systems shall be allowed at continuing education given in-house or at trade shows. Continuing education classes may also be offered in secondary languages as needed. No member of the Board may offer continuing education courses as required by this section.

(f) If an apprentice, cosmetologist, esthetician, manicurist, or teacher fails to renew his or her license within five years following the expiration date, the licensee shall be required ~~to pay the license fee for each year that the fees are delinquent~~ and to pass an examination as prescribed by the Board before the license will be reinstated.

(g) Cosmetic art school licenses shall be renewed on or before October 1 of each year. A late fee shall be charged for licenses renewed after that date. Any license not renewed by November 1 of that year shall expire. A cosmetic art school whose license has been expired for one year or less shall have its license reinstated upon payment of the reinstatement fee, the late fee, and all unpaid license fees.

(h) Upon request by a licensee for inactive status, the Board may place the licensee's name on the inactive list so long as the licensee is in good standing with the Board. An inactive licensee is not required to complete continuing education requirements. An inactive licensee shall not practice cosmetic art for consideration. However, the inactive licensee may continue to purchase supplies as accorded an active licensee. When the inactive licensee desires to be removed from the inactive list and return to active practice, the inactive licensee shall notify the Board of his or her desire to return to active status and pay the required fee as determined by the Board. As a condition of returning to active status, the Board may require the licensee to complete eight to 24 hours of continuing education pursuant to subsection (e) of this section."

SECTION 2. G.S. 88B-29(a) reads as rewritten:

"(a) Authority to Assess Civil Penalties. – In addition to taking any of the actions permitted under G.S. 88B-24, the Board may assess a civil penalty not in excess of one thousand dollars ($1,000) for the violation of any section of this Chapter or the violation of any rules adopted by the Board. ~~All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred.~~ The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 3. Section 1 of this act becomes effective October 1, 2004. Section 2 of this act is effective when it becomes law and applies to violations occurring on or after that date.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 1, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
FRANKLIN FOLGER	NC DOT
Susan Valaani	Nationwide
Bill Scoggin	ICCLA
[illegible]	MFOS
Doug Van Essen	NC State Board of Cosmetic Art
Helen Pollard Frazier	NC Cosmetology Liaison Council
Debbie Brooks	Central Carolina Community College, Cosmetology Dept NCA
Henry M Lancaster II	LCA/FDMA NC
MICHAEL CROWELL	LANIER, RALEIGH
Bill Wilson	NCATL
R. Paul Wilms	NCMBA

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 1, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Byron Brady	NCA of NC
Rick Zechini	NC Assoc. of REALTORS
	SABDM
David Meredith	NC State Grange
	UTU
Linwood Jones	NCHA
	NCSIOL

Senate Commerce Committee
Tuesday, July 13, 2004, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 859	Board of Mortuary Science.	Representative Adams

Other Business

Adjournment

SENATE COMMERCE COMMITTEE
Tuesday, July 13, 2004 at 11:00 a.m.
Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on Tuesday, July 13, 2004, in Room 1027 of the Legislative Building. Thirteen members of the committee were present. Senator R. C. Soles, Jr., presided. He introduced the pages: Leah Nudelman of Greensboro, sponsored by Senator Kay Hagan; Emily Sink of Lexington, sponsored by Senator Stan Bingham; Dustin Sellers of Whiteville, sponsored by Senator R.C. Soles, Jr.; and Suzanne Kirk of Cary, sponsored by Senator Richard Stevens.

Senator Soles recognized Representative Alma Adams, sponsor of HB 859, Board of Mortuary Science, to explain a proposed committee substitute for the bill. Senator Katie Dorsett moved adoption of the committee substitute for discussion purposes. The motion carried. Senator Soles recognized several people to speak on the legislation:

- Mr. Jody Tyson of the Taylor-Tyson Funeral Service, Snow Hill, spoke in opposition to the bill and the committee substitute (see attachment).
- Mr. Michael Rulison, President of the Funeral Consumers Alliance of the Triangle, spoke in opposition to the bill and the committee substitute (see attachment).
- Mr. Paul Harris, Executive Director of the North Carolina Board of Funeral Service, spoke in opposition to the bill and the committee substitute.
- Mr. Mark Henderson, attorney for the North Carolina Funeral Directors Association, spoke in opposition to the bill and the committee substitute.
- Mr. William Mason, Past President of the Funeral Directors and Morticians Association of North Carolina introduced Mr. Joseph B. Cutchins, Jr., a member of the organization, to speak in support of the committee substitute.
- Mr. Henry Lancaster, representing the Funeral Directors and Morticians Association of North Carolina, spoke in support of the committee substitute.
- Senator Jeanne Lucas spoke in support of the committee substitute.

In addition, Mr. Jay Roberts, President of the Cremation Association of North Carolina, e-mailed Senator Soles to inform him of the Cremation Association's opposition to the legislation (see attached).

Senator Soles had a handout passed out to the committee members. It listed the makeup of the boards in neighboring states that use the appointment process (see attached). The handout was prepared by Representative Adams.

Senator Dorsett sent forth an amendment to change the effective date of the legislation from "when it became law" to January 1, 2005, and moved its adoption. The motion carried. Senator Dorsett asked committee members to support the bill. Senator Apodaca commented that he was

concerned with losing consumer input because of the criteria for selection of members to serve on the Board as described in the legislation.

Due to the lateness of the hour, Senator Soles adjourned the meeting and said the bill would be taken up at a later time.

The meeting adjourned at 12:10 p.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 859

Committee Substitute Favorable 4/29/03

Third Edition Engrossed 4/30/03

Short Title: Board of Mortuary Science. (Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE LAW CONCERNING THE ELECTION OF MEMBERS OF THE BOARD OF MORTUARY SCIENCE AND TO ESTABLISH A NEW PROCESS WHEREBY MEMBERS ARE APPOINTED TO SERVE ON THE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-210.18 is repealed.

SECTION 2. Article 13A of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-210.18A. Board of Mortuary Science created; qualifications; vacancies; removal.**

(a) The General Assembly declares that the practice of funeral service affects the public health, safety, and welfare and is subject to regulation and control in the public interest. The public interest requires that only qualified persons be permitted to practice funeral service in North Carolina and that the profession merit the confidence of the public. This Article shall be liberally construed to accomplish these ends.

(b) The North Carolina Board of Mortuary Science is created and shall regulate the practice of funeral service in this State. The Board shall have nine members as follows:

(1) Three members who are funeral director licensees elected by the North Carolina Funeral Directors Association, Inc., two members who are funeral director licensees elected by the Funeral Directors & Morticians Association of North Carolina, Inc., and two members elected by unaffiliated funeral director licensees and funeral service licensees.

(2) One member appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, who is a member of the general public.

(3) One member appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, who is a member of the general public.

Members of the Board shall serve staggered three-year terms, ending on June 30 of the last year of the term or when a successor has been duly appointed, whichever is later. No member may serve more than two complete consecutive terms.

(c) Qualifications. – Members appointed by the Governor shall hold a license issued by the Board and shall be engaged in full-time employment in this State in a practice authorized by his or her license. Public members shall not be licensed under this Article or employed by a person who is licensed under this Article.

(d) Vacancies. – A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(e) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved."

SECTION 3. The two members most recently elected to the Board of Mortuary Science and serving on the Board on the effective date of this act shall complete their current terms. To establish staggered terms of the members of the Board of Mortuary Science pursuant to G.S. 90-210.18A(b), three members recommended by the North Carolina Funeral Directors Association, Inc., shall serve two-year terms, and two members recommended by that Association shall serve three-year terms. One member recommended by the Funeral Directors & Morticians Association of North Carolina, Inc., shall serve a two-year term, and one member recommended by that Association shall serve a three-year term. The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint one member for a one-year term, and the General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint one member for a one-year term. After the staggered terms have been established, members appointed to the Board thereafter shall serve three-year terms.

SECTION 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 859

Committee Substitute Favorable 4/29/03
Third Edition Engrossed 5/1/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H859-CSSW-81 [v.7]

7/9/2004 2:01:43 PM

Short Title: Board of Funeral Service. (Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE LAW CONCERNING THE ELECTION OF MEMBERS OF THE BOARD OF FUNERAL SERVICE AND TO ESTABLISH A NEW PROCESS WHEREBY MEMBERS ARE APPOINTED TO SERVE ON THE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-210.18 is repealed.

SECTION 2. Article 13A of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-210.18A. Board of Funeral Service created; qualifications; vacancies; removal.**

(a) The General Assembly declares that the practice of funeral service affects the public health, safety, and welfare and is subject to regulation and control in the public interest. The public interest requires that only qualified persons be permitted to practice funeral service in North Carolina and that the profession merit the confidence of the public. This Article shall be liberally construed to accomplish these ends.

(b) The North Carolina Board of Funeral Service is created and shall regulate the practice of funeral service in this State. The Board shall have nine members as follows:

(1) Four members appointed by the Governor from nominees recommended by the North Carolina Funeral Directors Association, Inc. These members shall be persons licensed under this Article.

(2) Two members appointed by the Governor from nominees recommended by the Funeral Directors & Morticians Association of North Carolina, Inc. These members shall be persons licensed under this Article.

(3) One member appointed by the Governor who is licensed under this Article and who is not affiliated with any funeral service trade association.

(4) One member appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate. This member shall be a person who is not licensed under this Article or employed by a person who is licensed under this Article.

(5) One member appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives. This member shall be a person who is not licensed under this Article or employed by a person who is licensed under this Article.

Members of the Board shall serve staggered three-year terms, ending on June 30 of the last year of the term or when a successor has been duly appointed, whichever is later. No member may serve more than two complete consecutive terms.

(c) Vacancies. – A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(d) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved."

SECTION 3. To establish staggered terms of the members of the Board of Funeral Service pursuant to G.S. 90-210.18A(b), two members appointed by the Governor from nominees recommended by the North Carolina Funeral Directors Association, Inc., shall serve two-year terms, and two members appointed by the Governor from nominees recommended by that Association shall serve three-year terms. One member appointed by the Governor from nominees recommended by the Funeral Directors & Morticians Association of North Carolina, Inc., shall serve a two-year term, and one member appointed by the Governor from nominees recommended by that Association shall serve a three-year term. The Governor shall appoint the member appointed by the Governor under G.S. 90-210.18A(b)(3) for a one-year term. The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint one member for a one-year term, and the General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint one member for a one-year term. After the staggered terms have been established, members appointed to the Board thereafter shall serve three-year terms.

SECTION 4. This act is effective when it becomes law.

HOUSE BILL 859:
Board of Funeral Service

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	
Date:	July 13, 2004	**Summary by:**	Tim Hovis
Version:	Proposed Committee Substitute H859-CSSW-81 [v.7]		Committee Counsel

SUMMARY: The Proposed Committee Substitute for House Bill 859 eliminates the current system of statewide voting to elect members to the North Carolina Board of Funeral Service. The bill replaces the current system with a nine member Board with 7 members appointed by the Governor (4 recommended by the Funeral Directors Association; 2 recommended by the Funeral Directors & Morticians Association; 1 unaffiliated, licensed member) and 2 public members appointed by the General Assembly (1 recommended by the President Pro Tempore; 1 recommended by the Speaker). Members serve for staggered three-year terms. Public members may neither hold a license nor be employed by a licensed professional.

BILL ANALYSIS: Section 1 of the bill repeals G.S. 90-210.18 which governs the method for electing and appointing members to the Board of Funeral Service. (A copy of the statute is attached.)
Under current law, the Board consists of nine members--six professional members and three public members. Persons licensed in the state to practice embalming, funeral directing, or funeral service elect professional members to the Board in a statewide election. Public members are appointed by the Governor (1 member) and the General Assembly (2 members, upon recommendation of the President Pro Tempore and the Speaker). Current law requires that public members may neither be licensed nor employed by a licensee. Members serve for three-year terms.

The bill replaces the current elected system with a nine member Board appointed by the Governor and the General Assembly as follows:

- 4 members appointed by the Governor from nominees recommended by the Funeral Directors Association.
- 2 members appointed by the Governor from nominees recommended by the Funeral Directors & Morticians Association.
- 1 licensed member appointed by the Governor who is not affiliated with any service trade association.
- 1 public member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate.
- 1 public member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives.

Members serve for staggered three-year terms. No member may serve more than two complete, consecutive terms.

EFFECTIVE DATE: The Proposed Committee Substitute for House Bill 859 is effective when it becomes law.

§ 90-210.18. Construction of Article; State Board; members; election; qualifications; term; vacancies.

(a) The General Assembly declares that the practice of funeral service affects the public health, safety and welfare, and is subject to regulation and control in the public interest. The public interest requires that only qualified persons be permitted to practice funeral service in North Carolina, and that the profession merit the confidence of the public. This Article shall be liberally construed to accomplish these ends.

(b) The North Carolina Board of Funeral Service is created and shall regulate the practice of funeral service in this State. The Board shall have nine members as follows:

(1) Four funeral service licensees or persons holding both funeral director's license and an embalmer's license,

(2) Two persons holding a funeral director's license or a funeral service license, and

(3) Three public members.

(b1) A member's term shall be three years and shall expire on December 31 or when his or her successor has been duly elected or appointed. No member may serve more than two complete consecutive terms. All members of the Board shall have full voting authority.

(b2) The six seats on the Board for licensees shall be filled in an election in which every person licensed to practice embalming, funeral directing, or funeral service in this State may vote. No licensee may be nominated, elected, or serve unless he holds a North Carolina license in the class designated for the seat and unless the licensee is engaged in full-time employment in this State in a practice authorized by the licensee's license. Any vacancy occurring in an elective seat on the Board shall be filled for the unexpired term by majority vote of the remaining Board members.

(b3) The Governor, the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and the General Assembly upon the recommendation of the Speaker of the House of Representatives shall each appoint one public member to the Board. The public members of the Board may neither be licensed under this Article nor employed by a person who is. A vacancy occurring in a public member's seat shall be filled for the unexpired term by the appointing official.

(c) Nominations and elections of members of the North Carolina State Board of Funeral Service shall be as follows:

(1) An election shall be held each year to elect two persons for membership on the Board of Funeral Service, each to take office on the first day of January following the election. If in any year the election of a member of the Board is not completed by January 1, the member elected that year shall take office immediately after completion of the election.

(2) Every embalmer, funeral director and funeral service licensee with a current North Carolina license shall be eligible to vote in all elections. The holding of such a license to practice in North Carolina shall constitute registration to vote in such elections. The list of licensed embalmers, funeral directors and funeral service licensees shall constitute the registration list for elections.

(3) All elections shall be conducted by the State Board of Funeral Service which is hereby constituted a Board of Funeral Service Elections. If a member of the State Board of Funeral Service whose position is to be filled at any election is nominated to succeed himself and does not withdraw his name, he shall be disqualified to serve as a member of the Board of Funeral Service Elections for that election and the remaining members of the Board of Funeral Service Elections shall proceed and function without his participation.

(4) Nomination of candidates for election shall be made to the Board of Funeral Service Elections by a written petition signed by not less than 20 embalmers, funeral directors or funeral service licensees licensed to practice in North Carolina, and filed with said Board of Funeral Service Elections subsequent to the first day of May of the year in which the election is to be held and not later than midnight of the first day of August of such year, or not later than such earlier date (not before July 1) as may be set by the Board of Funeral Service Elections: Provided, that not less than 10 days' notice of such earlier date shall be given to all embalmers, funeral directors and funeral service licensees qualified to sign a petition of nomination.

(5) Any person who is nominated as provided in subdivision (4) above may withdraw his name by written notice delivered to the Board of Funeral Service Elections or its designated secretary at any time prior to the closing of the polls in any election.

(5a) Repealed by Session Laws 1983, c. 69, s. 3.

(6) Following the close of nominations, there shall be prepared, under and in accordance with such rules and regulations as the Board of Funeral Service Elections shall prescribe, ballots containing identification of the seats for election and, in alphabetical order, the names of all nominees for each seat. Each ballot shall have such method of identification, and such instructions and requirements printed thereon, as shall be prescribed by the Board of Funeral Service Elections at such time as may be fixed by the Board of Funeral Service Elections a ballot and a return official envelope addressed to said Board shall be mailed to each embalmer, funeral director and funeral service licensee licensed to practice in North Carolina, together with a notice by said Board designating the latest day and hour for return mailing and containing such other items as such Board may see fit to include. The said envelope shall bear a serial number and shall have printed on the left portion of its face the following:

"Serial No. of Envelope_____
Signature of Voter_____
Address of Voter _____
_____

(Note: The enclosed ballot is not valid unless the signature of the voter is on this envelope)." The Board of Funeral Service Elections may cause to be printed or stamped or written on said envelope such additional notice as it may see fit to give. No ballot shall be valid or shall be counted in an election unless within the

time hereinafter provided it has been delivered to said Board by hand or by mail and shall be sealed. The said Board by rule may make provision for replacement of lost or destroyed envelopes or ballots upon making proper provisions to safeguard against abuse.

(7) The date and hour fixed by the Board of Funeral Service Elections as the latest time for delivery by hand or mailing of said return ballots shall be not earlier than the tenth day following the mailing of the envelopes and ballots to the voters.

(8) The said ballots shall be canvassed by the Board of Funeral Service Elections beginning at 1:00 p.m. on a day and at a place set by said Board and announced by it in the notice accompanying the sending out of the ballots and envelopes, said date to be not later than four days after the date fixed by the Board for the closing of the balloting. The canvassing shall be made publicly and any licensed embalmer, funeral director or funeral service licensee may be present. The counting of ballots shall be conducted as follows: The envelopes shall be displayed to the persons present and an opportunity shall be given to any person present to challenge the qualification of the voter whose signature appears on the envelope or to challenge the validity of the envelope. Any envelope (with enclosed ballot) challenged shall be set aside, and the challenge shall be heard later or at that time by said Board. After the envelopes have been so exhibited, those not challenged shall be opened and the ballots extracted therefrom, insofar as practicable without showing the marking on the ballots, and there shall be a final and complete separation of each envelope and its enclosed ballot. Thereafter each ballot shall be presented for counting, shall be displayed and, if not challenged, shall be counted. No ballot shall be valid if it is marked for more nominees than there are positions to be filled in that election: Provided, that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choices or choice from the ballot. The counting of ballots shall be continued until completed. During the counting, challenge may be made to any ballot on the grounds only of defects appearing on the face of the ballot. The said Board may decide the challenge immediately when it is made or it may put aside the ballot and determine the challenge upon the conclusion of the counting of the ballots.

(9) a. Election shall be determined by a majority of the votes cast. As used in this subdivision "category I" refers to the seat held by a funeral service licensee or a person holding both a funeral director's license and an embalmer's license, and "category II" refers to the seat held by a funeral director or a funeral service licensee. A majority shall be determined:

1. In an election to fill one seat in category I and one seat in category II, and if there are two or more candidates for a category, the majority shall be determined by dividing the total vote cast for all candidates in the category by two. An excess of the sum so ascertained shall be a majority.

2. In an election to fill two seats in the same category, and if there are more than two candidates, the majority shall be determined by dividing the total vote cast for all candidates by two and by dividing the result by two. Any excess of the sum so ascertained shall be a majority. If more than two candidates obtain a majority the two having the highest vote shall be declared elected.

b. If there is a failure to obtain a majority of the votes cast for any seat the following procedures shall apply:

1. In an election to fill one seat in category I and one seat in category II, and if no candidate receives a majority in a category, the candidate receiving the highest number of votes in that category shall be declared elected unless the candidate receiving the second highest number of votes, within 10 days of having been notified by the Board of the vote total, shall request a second election. In the second election, the names of the candidates who received the highest and the next highest number of votes shall appear on the ballot.

2. In an election to fill two seats in the same category, and if no candidate receives a majority, the two candidates receiving the highest number of votes shall be declared elected unless the candidate receiving the next highest number of votes, within 10 days of having been notified by the Board of the vote total, shall request a second election. In the second election the names of the two candidates who received the highest number of votes in the first election and the name of the candidate who received the next highest number of votes shall appear on the ballot, and the two candidates who receive the highest number of votes in the second election shall be declared elected. If in the first election only one candidate fails to receive a majority, the candidate receiving the highest number of votes, but not a majority, shall be declared elected unless the candidate receiving the next highest number of votes, within 10 days of having been notified by the Board of the vote total, shall request a second election. In the second election the name of the candidate who received the highest number of votes, but not a majority, in the first election and the name of the candidate who received the next highest number of votes shall appear on the ballot, and the candidate who receives the higher number of votes in the second election shall be declared elected.

c. In any election if there is a tie between candidates the tie shall be resolved by a vote of the Board, provided that if a member of the Board is one of the candidates in the tie he may not participate in such vote.

(10) In the event there shall be required a second election, there shall be followed the same procedure as outlined in the paragraphs above subject to the same limitations and requirements.

(11) In the case of the death or withdrawal of a candidate prior to the closing of the polls in any election, he shall be eliminated from the contest and any votes cast for him shall be disregarded. If, at any time after the closing of the period for nominations, because of lack of plural or proper nominations, or death, or withdrawal, or disqualification or any other reason, there shall be (i) only one candidate for a position, he shall be declared elected by the Board of Funeral Service Elections, or (ii) no candidate for a position, the position shall be filled by the State Board of Funeral Service. In the event of the death or withdrawal of a candidate after election but before taking office, the position to which he was elected shall be filled by the State Board of Funeral Service. In the event of the death or resignation of a member of the State Board of Funeral Service, after taking office, his position shall be filled for the unexpired term by the State Board of Funeral Service.

(12) An official list of all licensed embalmers, funeral directors and funeral service licensees shall be kept at an office of the Board of Funeral Service Elections and shall be open to the inspection of any person at all times. Copies may be made by any licensed embalmer, funeral director or funeral service licensee. As soon as the voting in any election begins, a list of the licensed embalmers, funeral directors, and funeral service licensees shall be posted in such office of said Board and indication by mark or otherwise shall be made on that list to show whether a ballot-enclosing envelope has been returned.

(13) All envelopes enclosing ballots and all ballots shall be preserved and held separately by the Board of Funeral Service Elections for a period of six months following the close of an election.

(14) From any decision of the Board of Funeral Service Elections relative to the conduct of such elections, appeal may be taken to the courts in the manner otherwise provided by Chapter 150B of the General Statutes of North Carolina.

(15) The Board of Funeral Service Elections is authorized to make rules and regulations relative to the conduct of these elections, provided same are not in conflict with the provisions of this section and provided that notice shall be given to all licensed embalmers, funeral directors, and funeral service licensees.

(d) The Board of Funeral Service Elections is authorized to appoint such secretary or secretaries and/or assistant secretary or assistant secretaries to perform such functions in connection with such nominations and elections as said Board shall determine, provided that any protestant or contestant shall have the right to a hearing by said Board in connection with any challenge of a voter, or an envelope, or a ballot or the counting of an election. Said Board is authorized to designate an office or offices for the keeping of lists of registered embalmers, funeral directors and funeral service licensees, for the issuance and receipt of envelopes and ballots. (1901, c. 338, ss. 1-3; Rev., s. 4384; C.S., s. 6777; 1931, c. 174; 1945, c. 98, s. 1; 1949, c. 951, s. 1; 1957, c. 1240, s. 1; 1965, c. 630, s. 1; 1973, c. 476, s. 128; 1975, c. 571; 1979, c. 461,

ss. 1-4; 1983, c. 69, ss. 1-4; 1987, c. 430, s. 1; c. 827, s. 1; c. 879, s. 6.2; 1991, c. 528, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 901, s. 3; 2001-294, s. 1; 2001-486, s. 2.3(a); 2003-420, s. 1.)

Joan Leatherman (Sen. Soles)

From: jody [jodytyson@earthlink.net]
Sent: Saturday, July 10, 2004 10:10 AM
To: Sen. R. C. Soles; Sen. David Hoyle; Sen. Tony Rand; Sen. Phil Berger; Sen. Woody White; Sen. Tom Apodaca; Sen. Robert Carpenter; Sen. James Forrester; Sen. Virginia Foxx; Sen. Linda Garrou; Sen. Kay Hagan; Sen. John Kerr; Sen. Tony P. Moore; Sen. Robert Pittenger; Sen. William Purcell; Sen. Bob Rucho; Sen. R. B. Sloan, Jr.
Subject: HB 859

July 10, 2004

Dear Chairman, Vice-Chairmen and Members of the Senate Commerce Committee,

Friday House Bill 859 was re-assigned to the Senate Commerce Committee. As a Funeral Service Licensee, whom would be directly affected by this legislation, if passed, I urge you to not support it.

The NC Board of Funeral Service was created on the venue that â€œThe General Assembly declares that the practice of funeral service affects the public health, safety and welfare, and is subject to regulation and control in the public interestâ€□ (Chapter 90-210.18). Pursuant to the same statue, the board was created with nine members; two being Licensed Funeral Directors elected by all licensees, four being Funeral Service Licensees (those licensed to practice funeral directing and embalming) elected by all licensees, and three public members whom are appointed by the General Assembly and Governor.

As the law currently is, we the licensees, have the right to vote to elect six members of the NC Board of Funeral Service. Any person licensed by the NC Board of Funeral Service is eligible to run for a seat on the board. The only requirement to have oneâ€™s name placed on the ballot is to file a petition with the NC Board of Funeral Service by the deadline stated and the petition must be signed by twenty fellow licensees.

House Bill 859 seeks to abolish the system of elections to the NC Board of Funeral Service and replace it with a system of appoints or nominations made by TRADE associations, specifically the NC Funeral Directors Association and the Funeral Directors and Morticians Association of NC. These organizations are trade associations who are responsible to its dues paying members, not the general public. The very concept of appointments from trade organizations is in direct conflict with the purpose and venue of the NC Board of Funeral Service.

In addition, if made law, HB 859 would specifically name these associations and the number of appointments that each would make. The controversy that would be created if one or both of these organizations failed to exist would be horrific. In addition, this bill discriminates against those licensees who choose not to be a member of a specific or any association. It is also interesting to note that there are other groups of funeral service professionals who meet in a collaborative effort to better the profession, such as the NC Focus Group on Funeral Service. This group is denied representation and placed in the blanket category of unaffiliated.

HB 859 was introduced on the premises by some members of the Funeral Directors and Morticians Association of NC (FDMANC) that â€œit would ensure relative representation of FDMANC members on the NC Board of Funeral Service, which we have not been afforded during the 76 years existence of our Mortuary Science organizationâ€□, according to Dennis J. Stallings, State President, in a letter he sent to members of the General Assembly, May 8, 2003.

Mr. Stallingâ€™s statement is not accurate. After having researched each election of the NC Board of Funeral Service since 1992, the results prove that FDMANC has had â€œrelative representationâ€□. Mr. Darryl Hart of Asheville, who is a member of the FDMANC, was elected to serve consecutive terms in 1996 and 1999. In addition, Mr. Hart also was elected by NC Board of Funeral Service members to serve as the boardâ€™s President.

Kimberly Kelsey, who was defeated by a mere 45 votes in the 2002 election, is a member of the FDMANC. In the elections of 1997, 1999 and 2000 there was not a candidate running for

ɔtion that was a member of FDMANC. Frankly, the claim by FDMANC to a lack of ɹpresentation has more to do with a small membership and a lack of promoting a candidate with in its own organization. However, please remember that it is regardless of the associationâ€™s perceived right to â€œrelative representationâ€□, the NC Board of Funeral Service is created to protect the public interest not to be a forum for associational epresentation.

Thus, HB 859 only serves to weaken our current structure of the NC Board of Funeral Service and the basic democratic right to vote is exchanged for associational politics. This is wrong and serves only to erode democracy, robe liberty and place the general public prey to a regulatory board governed by associational interests instead of unaffiliated representation.

The current process of election to the NC Board of Funeral Service could not be anymore fair than it is. The NC Board of Funeral Service regulates this profession according to the General Statutes and is compromised of six members of this profession duly elected by their fellow licensees. To become a candidate for a seat on the NC Board of Funeral Service simply requires the previously mentioned petition, not even a filing fee is required. However, once that individualâ€™s name is on the ballot it is incumbent upon that individual to campaign among the licensees, who vote, to ensure election. To be honest, this legislation seems to be more about an unwillingness to work for election to the NC Board of Funeral Service and more about wanting a guarantee that requires little or no effort.

Therefore, I implore you to not support HB 859 or any amendment thereof. The only appropriate action for HB 859 is to be defeated. I would only hope that itsâ€™ defeat would be done in such proportions as to send a clear and precise message, that such an attempt to erode democracy and freedom in exchange for nominations by associations, whose purpose is in direct conflict with a regulating board such as the NC Board of Funeral Service, will not be tolerated.

Thank you for the opportunity to express my feelings and convictions regarding HB 859 and I look forward to seeing you on Tuesday morning.

Sincerely,

Jody C. Tyson, Funeral Service Licensee
Taylor-Tyson Funeral Service
Snow Hill, North Carolina

Joan Leatherman (Sen. Soles)

From: Michael Rulison [re78vm@mindspring.com]
Sent: Monday, July 12, 2004 1:21 PM
To: Sen. R. C. Soles
Subject: H 859 Hearing - 13 July 2004



H 859 - FCAT Commentary.pdf

Dear Senator Soles:

I have requested a chance to appear before your committee at its meeting tomorrow.

Attached is the material from which I wish to speak.

Thank you so much for your curtesy.

Michael Rulison, President
Funeral Consumers Alliance of the Triangle
919/782-9576

Funeral Consumers Alliance of the Triangle
(Formerly: Memorial Society of the Triangle)

PO Box 1223
Chapel Hill NC 27514-1223
www.rtpnet.org/endolife

Member Services Contact: **Paul Humphrey, 919/834-6898, pah@intrex.net**

Please Reply to:
3256 Lewis Farm Road
Raleigh NC 27607-6723
919/782-9576

Monday, 12 July 2004

Sen. R. C. Soles, Chairman
Commerce Committee NC Senate

Dear Sen. Soles:

H 859 Comm. Subst. 3rd Ed., Board of Mortuary Science.

Having read and compared § 90-210.18 (the existing statute) with § 90-210.18A (offered in the above bill) as a replacement, I find the replacement an incomplete and unadvisable substitute for the existing statute. I request that your committee recommend against the passage of this bill (or any amendments that contain its principal features) in the Senate.

Before arriving at this position, I considered the public policy implications of H 859 and spoke with representatives of the two professional associations whose members (as well as all other persons licensed by the Board of Funeral Service) would be affected by it.

Public Policy: Decisions are more legitimate when those affected by them can have input in the making of them. Thus, representatives from a regulated industry have an appropriate place on a board regulating that industry. But representatives of the general public and all persons dealing with that industry also deserve a place at the regulatory table.

H 859:

- This bill shifts the balance toward representatives of the regulated industry and away from persons not holding licenses in the regulated industry; bad policy.
- This bill shifts the balance toward representatives of two professional organizations away from licensees unaffiliated with them: bad policy.
- This bill is incomplete; it fails to specify procedures by which the professional associations "elect" from among their members those to serve on the board; bad process.
- This bill is incomplete; it fails to specify how board licenses who are not members of either professional association are to be elected; it destroys an existing election procedure and provides no substitute; bad process.

(Next Page Please)

- This bill specifies that persons elected by the two professional associations shall hold funeral director licenses; existing legislation allows candidates to be either funeral service licensees or funeral director-embalmer (two licenses) licensees. Note that a funeral service license is broader in scope than the older funeral director license. The new legislation potentially downgrades board member qualifications; bad policy.
- This bill is restrictive and confusing; it requires (Section (c) that members appointed by the Governor hold a 'license issued by the Board and ... engaged in full-time employment..." as provided by their license; 1) there is no prior reference to who or how many persons the Governor appoints. 2) The "Board" in question seems logically to be the Board of Funeral Service; but that is specifically the Board whose licensees are excluded by the remainder this section. 3) No public policy is served restricting gubernatorial appointees to persons who hold any license at all and are also actively employed; this excludes many citizens who hold no license and/or are not employed. **Bad policy.**

Other aspects of H 859 3rd ed. may also be suspect, but the defects cited above make me think that its sponsors may not have had time to consider it with care before submitting it to the House. It is deeply flawed on bases of both policy and process and deserves burial with as few resources as decently possible; there is always another legislative session.

On behalf of funeral consumers, which is ultimately all of us, I hope the Senate, having given this bill its due hearing, will act to scotch a poorly conceived and constructed attempt to alter toward those who are regulated a system that is not demonstrably broken.

Sincerely yours,

Michael Rulison

Michael Rulison, President
re78vm@mindspring.com

Joan Leatherman (Sen. Soles)

From: Jay R. Roberts,C.F.S.P. [jay1382@bellsouth.net]
Sent: Friday, July 09, 2004 3:01 PM
To: Sen. R. C. Soles; Sen. David Hoyle; Sen. Tony Rand; Sen. Phil Berger
Subject: Help

Gentlemen,
Please do not support House Bill 859, I am President of The Cremation Association of North Carolina and yes it is decided by the democratic process of members. Our board volunteered to serve and were voted into office much like you were, House Bill 859 is wanting to take that priviledge away from the funeral service people in NC. Funeral service people know what is in the best interest for the industry not someone that is appointed to the board who has no idea about the problems and concerns that face funeral directors.

Thank you for your time,

Jay Roberts, C.F.S.P.
President of C.A.N.C.

Neighboring States Where The Appointment Process is in place

South Carolina - 11 Member Board

6 SCFDA
3 S. C. Mortician Assn. (Black)
2 - Public

Tennessee - 7 Member Bd.

6 TNFDA
1 - Tennessee FD & MA (Black)
0 - Public

Virginia - 7 Mem. Bd

5 Assn.
2 - Public (2 Black Assn)

Georgia - 7 Memb. Bd

5 Assn
2 Public

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 859 DATE 7/13/04

S. B. No. _____ Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE Proposed Committee Sub.

Rep.)
Sen.) Katie G. Dorsett

1 moves to amend the bill on page 2, line 39

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting the line to read:

4

5 "SECTION 4. This act becomes

6 effective January 1, 2005."

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SIGNED Katie G. Dorsett

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 13, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jody Dyson	Taylor-Dyson Funeral Service
R. Alex Lee	Bryan-Lee Funeral Home
Harry Leathers	Leavitt Funeral Home
Mark Henderson	Law Offices of Mark Henderson
Jon Carr	NC Funeral Directors Assoc.
Michael Moye	NCFDA
Larry Stegall	NCFDA
Danny Candell	NCFDA
Sean Sarder	Law Offices of Mark Henderson
Michael Roberson	Funeral Consumers Alliance of the Triangle
Paul Harris	Executive Director - NC Board of Funeral Service

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 13, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
GEORGE S. PARROTT	N C BOARD OF FUNERAL SERVICE
Lucius PULLEN	COUNSEL, NCMA
Claude Platton	NC Justice Center
Susan Schmidt	NC Justice Center
Jim Dolk	Gov. Office
Perry Moss	Funeral Directors
Wm Manson, Jr	Funeral Director
William obetts	Funeral Directors
Rosalind O. Mitchell	Funeral Directors & Morticians Assn.
Dymphna Wiseman Mitchell	Funeral Directors & Morticians Assn.
JOSEPH B. CLETCHINS, JR.	FUNERAL DIRECTORS + MORTICIANS ASSN. OF NC, INC.

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 13, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
D. Booth	UNC SPA
David Barnes	Powers & Sprug LLP
Rudolph E. Ellis	Rudolph E. Ellis and Associates
Bill Wilson	NCATL
Paul Pulley	NCATL
Gary Roberts	AP
A.J. Craig	LCA
Abbey Youngkin	GA Staff
Jack Bligh	NCFDA
Jerry W. Hawke	NCBFS
Steve Woodson	NC Farm Bureau

VISITOR REGISTRATION SHEET

Senate Commerce Committee — July 13, 2004

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charlie Dietz	NC Trucking Association
J Craig Lewis	UHS
[illegible]	Poyner + Spruill
Dick Carlton	Carlton + Alexander PLLC

SENATE COMMERCE COMMITTEE
Tuesday, July 13, 2004 at 4:00 p.m.
Senate Chamber, Legislative Building

MINUTES

The Senate Commerce Committee met at 4:00 p.m. on Tuesday, July 13, 2004, in the Senate Chamber. Fourteen members of the committee were present. Senator R. C. Soles, Jr., presided.

Senator Soles recognized Senator Katie Dorsett who made a motion that the committee substitute considered and amended by the committee at the morning's meeting be given a favorable report and the amendment be engrossed into a new committee substitute. The motion carried.

The meeting adjourned at 4:03 p.m.

Senator R. C. Soles, Jr., Chair

Dot Waugaman, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

COMMERCE COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair

Tuesday, July 13, 2004

Senator SOLES, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **859** Board of Mortuary Science.

Draft Number:	PCS 70508
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H 3

HOUSE BILL 859

Committee Substitute Favorable 4/29/03

Third Edition Engrossed 4/30/03

Short Title: Board of Mortuary Science. (Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE LAW CONCERNING THE ELECTION OF MEMBERS OF THE BOARD OF MORTUARY SCIENCE AND TO ESTABLISH A NEW PROCESS WHEREBY MEMBERS ARE APPOINTED TO SERVE ON THE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-210.18 is repealed.

SECTION 2. Article 13A of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-210.18A. Board of Mortuary Science created; qualifications; vacancies; removal.**

(a) The General Assembly declares that the practice of funeral service affects the public health, safety, and welfare and is subject to regulation and control in the public interest. The public interest requires that only qualified persons be permitted to practice funeral service in North Carolina and that the profession merit the confidence of the public. This Article shall be liberally construed to accomplish these ends.

(b) The North Carolina Board of Mortuary Science is created and shall regulate the practice of funeral service in this State. The Board shall have nine members as follows:

(1) Three members who are funeral director licensees elected by the North Carolina Funeral Directors Association, Inc., two members who are funeral director licensees elected by the Funeral Directors & Morticians Association of North Carolina, Inc., and two members elected by unaffiliated funeral director licensees and funeral service licensees.

(2) One member appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, who is a member of the general public.

(3) One member appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, who is a member of the general public.

Members of the Board shall serve staggered three-year terms, ending on June 30 of the last year of the term or when a successor has been duly appointed, whichever is later. No member may serve more than two complete consecutive terms.

(c) Qualifications. – Members appointed by the Governor shall hold a license issued by the Board and shall be engaged in full-time employment in this State in a practice authorized by his or her license. Public members shall not be licensed under this Article or employed by a person who is licensed under this Article.

(d) Vacancies. – A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(e) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved."

SECTION 3. The two members most recently elected to the Board of Mortuary Science and serving on the Board on the effective date of this act shall complete their current terms. To establish staggered terms of the members of the Board of Mortuary Science pursuant to G.S. 90-210.18A(b), three members recommended by the North Carolina Funeral Directors Association, Inc., shall serve two-year terms, and two members recommended by that Association shall serve three-year terms. One member recommended by the Funeral Directors & Morticians Association of North Carolina, Inc., shall serve a two-year term, and one member recommended by that Association shall serve a three-year term. The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint one member for a one-year term, and the General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint one member for a one-year term. After the staggered terms have been established, members appointed to the Board thereafter shall serve three-year terms.

SECTION 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

H D

HOUSE BILL 859

Committee Substitute Favorable 4/29/03

Third Edition Engrossed 5/1/03

PROPOSED SENATE COMMITTEE SUBSTITUTE H859-CSSW-81 [v.7]

7/9/2004 2:01:43 PM

Short Title: Board of Funeral Service. (Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE LAW CONCERNING THE ELECTION OF MEMBERS OF THE BOARD OF FUNERAL SERVICE AND TO ESTABLISH A NEW PROCESS WHEREBY MEMBERS ARE APPOINTED TO SERVE ON THE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-210.18 is repealed.

SECTION 2. Article 13A of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-210.18A. Board of Funeral Service created; qualifications; vacancies; removal.**

(a) The General Assembly declares that the practice of funeral service affects the public health, safety, and welfare and is subject to regulation and control in the public interest. The public interest requires that only qualified persons be permitted to practice funeral service in North Carolina and that the profession merit the confidence of the public. This Article shall be liberally construed to accomplish these ends.

(b) The North Carolina Board of Funeral Service is created and shall regulate the practice of funeral service in this State. The Board shall have nine members as follows:

(1) Four members appointed by the Governor from nominees recommended by the North Carolina Funeral Directors Association, Inc. These members shall be persons licensed under this Article.

(2) Two members appointed by the Governor from nominees recommended by the Funeral Directors & Morticians Association of North Carolina, Inc. These members shall be persons licensed under this Article.

(3) One member appointed by the Governor who is licensed under this Article and who is not affiliated with any funeral service trade association.

(4) One member appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate. This member shall be a person who is not licensed under this Article or employed by a person who is licensed under this Article.

(5) One member appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives. This member shall be a person who is not licensed under this Article or employed by a person who is licensed under this Article.

Members of the Board shall serve staggered three-year terms, ending on June 30 of the last year of the term or when a successor has been duly appointed, whichever is later. No member may serve more than two complete consecutive terms.

(c) Vacancies. – A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(d) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved."

SECTION 3. To establish staggered terms of the members of the Board of Funeral Service pursuant to G.S. 90-210.18A(b), two members appointed by the Governor from nominees recommended by the North Carolina Funeral Directors Association, Inc., shall serve two-year terms, and two members appointed by the Governor from nominees recommended by that Association shall serve three-year terms. One member appointed by the Governor from nominees recommended by the Funeral Directors & Morticians Association of North Carolina, Inc., shall serve a two-year term, and one member appointed by the Governor from nominees recommended by that Association shall serve a three-year term. The Governor shall appoint the member appointed by the Governor under G.S. 90-210.18A(b)(3) for a one-year term. The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint one member for a one-year term, and the General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint one member for a one-year term. After the staggered terms have been established, members appointed to the Board thereafter shall serve three-year terms.

SECTION 4. This act is effective when it becomes law.

HOUSE BILL 859:
Board of Funeral Service

BILL ANALYSIS

Committee:	Senate Commerce Committee	**Introduced by:**	
Date:	July 13, 2004	**Summary by:**	Tim Hovis
Version:	Proposed Committee Substitute H859-CSSW-81 [v.7]		Committee Counsel

SUMMARY: The Proposed Committee Substitute for House Bill 859 eliminates the current system of statewide voting to elect members to the North Carolina Board of Funeral Service. The bill replaces the current system with a nine member Board with 7 members appointed by the Governor (4 recommended by the Funeral Directors Association; 2 recommended by the Funeral Directors & Morticians Association; 1 unaffiliated, licensed member) and 2 public members appointed by the General Assembly (1 recommended by the President Pro Tempore; 1 recommended by the Speaker). Members serve for staggered three-year terms. Public members may neither hold a license nor be employed by a licensed professional.

BILL ANALYSIS: Section 1 of the bill repeals G.S. 90-210.18 which governs the method for electing and appointing members to the Board of Funeral Service. (A copy of the statute is attached.)
Under current law, the Board consists of nine members--six professional members and three public members. Persons licensed in the state to practice embalming, funeral directing, or funeral service elect professional members to the Board in a statewide election. Public members are appointed by the Governor (1 member) and the General Assembly (2 members, upon recommendation of the President Pro Tempore and the Speaker). Current law requires that public members may neither be licensed nor employed by a licensee. Members serve for three-year terms.

The bill replaces the current elected system with a nine member Board appointed by the Governor and the General Assembly as follows:

- 4 members appointed by the Governor from nominees recommended by the Funeral Directors Association.
- 2 members appointed by the Governor from nominees recommended by the Funeral Directors & Morticians Association.
- 1 licensed member appointed by the Governor who is not affiliated with any service trade association.
- 1 public member appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate.
- 1 public member appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives.

Members serve for staggered three-year terms. No member may serve more than two complete, consecutive terms.

EFFECTIVE DATE: The Proposed Committee Substitute for House Bill 859 is effective when it becomes law.

§ 90-210.18. Construction of Article; State Board; members; election; qualifications; term; vacancies.

(a) The General Assembly declares that the practice of funeral service affects the public health, safety and welfare, and is subject to regulation and control in the public interest. The public interest requires that only qualified persons be permitted to practice funeral service in North Carolina, and that the profession merit the confidence of the public. This Article shall be liberally construed to accomplish these ends.

(b) The North Carolina Board of Funeral Service is created and shall regulate the practice of funeral service in this State. The Board shall have nine members as follows:

(1) Four funeral service licensees or persons holding both funeral director's license and an embalmer's license,

(2) Two persons holding a funeral director's license or a funeral service license, and

(3) Three public members.

(b1) A member's term shall be three years and shall expire on December 31 or when his or her successor has been duly elected or appointed. No member may serve more than two complete consecutive terms. All members of the Board shall have full voting authority.

(b2) The six seats on the Board for licensees shall be filled in an election in which every person licensed to practice embalming, funeral directing, or funeral service in this State may vote. No licensee may be nominated, elected, or serve unless he holds a North Carolina license in the class designated for the seat and unless the licensee is engaged in full-time employment in this State in a practice authorized by the licensee's license. Any vacancy occurring in an elective seat on the Board shall be filled for the unexpired term by majority vote of the remaining Board members.

(b3) The Governor, the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and the General Assembly upon the recommendation of the Speaker of the House of Representatives shall each appoint one public member to the Board. The public members of the Board may neither be licensed under this Article nor employed by a person who is. A vacancy occurring in a public member's seat shall be filled for the unexpired term by the appointing official.

(c) Nominations and elections of members of the North Carolina State Board of Funeral Service shall be as follows:

(1) An election shall be held each year to elect two persons for membership on the Board of Funeral Service, each to take office on the first day of January following the election. If in any year the election of a member of the Board is not completed by January 1, the member elected that year shall take office immediately after completion of the election.

(2) Every embalmer, funeral director and funeral service licensee with a current North Carolina license shall be eligible to vote in all elections. The holding of such a license to practice in North Carolina shall constitute registration to vote in such elections. The list of licensed embalmers, funeral directors and funeral service licensees shall constitute the registration list for elections.

(3) All elections shall be conducted by the State Board of Funeral Service which is hereby constituted a Board of Funeral Service Elections. If a member of the State Board of Funeral Service whose position is to be filled at any election is nominated to succeed himself and does not withdraw his name, he shall be disqualified to serve as a member of the Board of Funeral Service Elections for that election and the remaining members of the Board of Funeral Service Elections shall proceed and function without his participation.

(4) Nomination of candidates for election shall be made to the Board of Funeral Service Elections by a written petition signed by not less than 20 embalmers, funeral directors or funeral service licensees licensed to practice in North Carolina, and filed with said Board of Funeral Service Elections subsequent to the first day of May of the year in which the election is to be held and not later than midnight of the first day of August of such year, or not later than such earlier date (not before July 1) as may be set by the Board of Funeral Service Elections: Provided, that not less than 10 days' notice of such earlier date shall be given to all embalmers, funeral directors and funeral service licensees qualified to sign a petition of nomination.

(5) Any person who is nominated as provided in subdivision (4) above may withdraw his name by written notice delivered to the Board of Funeral Service Elections or its designated secretary at any time prior to the closing of the polls in any election.

(5a) Repealed by Session Laws 1983, c. 69, s. 3.

(6) Following the close of nominations, there shall be prepared, under and in accordance with such rules and regulations as the Board of Funeral Service Elections shall prescribe, ballots containing identification of the seats for election and, in alphabetical order, the names of all nominees for each seat. Each ballot shall have such method of identification, and such instructions and requirements printed thereon, as shall be prescribed by the Board of Funeral Service Elections at such time as may be fixed by the Board of Funeral Service Elections a ballot and a return official envelope addressed to said Board shall be mailed to each embalmer, funeral director and funeral service licensee licensed to practice in North Carolina, together with a notice by said Board designating the latest day and hour for return mailing and containing such other items as such Board may see fit to include. The said envelope shall bear a serial number and shall have printed on the left portion of its face the following:

"Serial No. of Envelope_____
Signature of Voter_____
Address of Voter _____
_____

(Note: The enclosed ballot is not valid unless the signature of the voter is on this envelope)." The Board of Funeral Service Elections may cause to be printed or stamped or written on said envelope such additional notice as it may see fit to give. No ballot shall be valid or shall be counted in an election unless within the

time hereinafter provided it has been delivered to said Board by hand or by mail and shall be sealed. The said Board by rule may make provision for replacement of lost or destroyed envelopes or ballots upon making proper provisions to safeguard against abuse.

(7) The date and hour fixed by the Board of Funeral Service Elections as the latest time for delivery by hand or mailing of said return ballots shall be not earlier than the tenth day following the mailing of the envelopes and ballots to the voters.

(8) The said ballots shall be canvassed by the Board of Funeral Service Elections beginning at 1:00 p.m. on a day and at a place set by said Board and announced by it in the notice accompanying the sending out of the ballots and envelopes, said date to be not later than four days after the date fixed by the Board for the closing of the balloting. The canvassing shall be made publicly and any licensed embalmer, funeral director or funeral service licensee may be present. The counting of ballots shall be conducted as follows: The envelopes shall be displayed to the persons present and an opportunity shall be given to any person present to challenge the qualification of the voter whose signature appears on the envelope or to challenge the validity of the envelope. Any envelope (with enclosed ballot) challenged shall be set aside, and the challenge shall be heard later or at that time by said Board. After the envelopes have been so exhibited, those not challenged shall be opened and the ballots extracted therefrom, insofar as practicable without showing the marking on the ballots, and there shall be a final and complete separation of each envelope and its enclosed ballot. Thereafter each ballot shall be presented for counting, shall be displayed and, if not challenged, shall be counted. No ballot shall be valid if it is marked for more nominees than there are positions to be filled in that election: Provided, that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choices or choice from the ballot. The counting of ballots shall be continued until completed. During the counting, challenge may be made to any ballot on the grounds only of defects appearing on the face of the ballot. The said Board may decide the challenge immediately when it is made or it may put aside the ballot and determine the challenge upon the conclusion of the counting of the ballots.

(9) a. Election shall be determined by a majority of the votes cast. As used in this subdivision "category I" refers to the seat held by a funeral service licensee or a person holding both a funeral director's license and an embalmer's license, and "category II" refers to the seat held by a funeral director or a funeral service licensee. A majority shall be determined:

1. In an election to fill one seat in category I and one seat in category II, and if there are two or more candidates for a category, the majority shall be determined by dividing the total vote cast for all candidates in the category by two. An excess of the sum so ascertained shall be a majority.

2. In an election to fill two seats in the same category, and if there are more than two candidates, the majority shall be determined by dividing the total vote cast for all candidates by two and by dividing the result by two. Any excess of the sum so ascertained shall be a majority. If more than two candidates obtain a majority the two having the highest vote shall be declared elected.

b. If there is a failure to obtain a majority of the votes cast for any seat the following procedures shall apply:

1. In an election to fill one seat in category I and one seat in category II, and if no candidate receives a majority in a category, the candidate receiving the highest number of votes in that category shall be declared elected unless the candidate receiving the second highest number of votes, within 10 days of having been notified by the Board of the vote total, shall request a second election. In the second election, the names of the candidates who received the highest and the next highest number of votes shall appear on the ballot.

2. In an election to fill two seats in the same category, and if no candidate receives a majority, the two candidates receiving the highest number of votes shall be declared elected unless the candidate receiving the next highest number of votes, within 10 days of having been notified by the Board of the vote total, shall request a second election. In the second election the names of the two candidates who received the highest number of votes in the first election and the name of the candidate who received the next highest number of votes shall appear on the ballot, and the two candidates who receive the highest number of votes in the second election shall be declared elected. If in the first election only one candidate fails to receive a majority, the candidate receiving the highest number of votes, but not a majority, shall be declared elected unless the candidate receiving the next highest number of votes, within 10 days of having been notified by the Board of the vote total, shall request a second election. In the second election the name of the candidate who received the highest number of votes, but not a majority, in the first election and the name of the candidate who received the next highest number of votes shall appear on the ballot, and the candidate who receives the higher number of votes in the second election shall be declared elected.

c. In any election if there is a tie between candidates the tie shall be resolved by a vote of the Board, provided that if a member of the Board is one of the candidates in the tie he may not participate in such vote.

(10) In the event there shall be required a second election, there shall be followed the same procedure as outlined in the paragraphs above subject to the same limitations and requirements.

(11) In the case of the death or withdrawal of a candidate prior to the closing of the polls in any election, he shall be eliminated from the contest and any votes cast for him shall be disregarded. If, at any time after the closing of the period for nominations, because of lack of plural or proper nominations, or death, or withdrawal, or disqualification or any other reason, there shall be (i) only one candidate for a position, he shall be declared elected by the Board of Funeral Service Elections, or (ii) no candidate for a position, the position shall be filled by the State Board of Funeral Service. In the event of the death or withdrawal of a candidate after election but before taking office, the position to which he was elected shall be filled by the State Board of Funeral Service. In the event of the death or resignation of a member of the State Board of Funeral Service, after taking office, his position shall be filled for the unexpired term by the State Board of Funeral Service.

(12) An official list of all licensed embalmers, funeral directors and funeral service licensees shall be kept at an office of the Board of Funeral Service Elections and shall be open to the inspection of any person at all times. Copies may be made by any licensed embalmer, funeral director or funeral service licensee. As soon as the voting in any election begins, a list of the licensed embalmers, funeral directors, and funeral service licensees shall be posted in such office of said Board and indication by mark or otherwise shall be made on that list to show whether a ballot-enclosing envelope has been returned.

(13) All envelopes enclosing ballots and all ballots shall be preserved and held separately by the Board of Funeral Service Elections for a period of six months following the close of an election.

(14) From any decision of the Board of Funeral Service Elections relative to the conduct of such elections, appeal may be taken to the courts in the manner otherwise provided by Chapter 150B of the General Statutes of North Carolina.

(15) The Board of Funeral Service Elections is authorized to make rules and regulations relative to the conduct of these elections, provided same are not in conflict with the provisions of this section and provided that notice shall be given to all licensed embalmers, funeral directors, and funeral service licensees.

(d) The Board of Funeral Service Elections is authorized to appoint such secretary or secretaries and/or assistant secretary or assistant secretaries to perform such functions in connection with such nominations and elections as said Board shall determine, provided that any protestant or contestant shall have the right to a hearing by said Board in connection with any challenge of a voter, or an envelope, or a ballot or the counting of an election. Said Board is authorized to designate an office or offices for the keeping of lists of registered embalmers, funeral directors and funeral service licensees, for the issuance and receipt of envelopes and ballots. (1901, c. 338, ss. 1-3; Rev., s. 4384; C.S., s. 6777; 1931, c. 174; 1945, c. 98, s. 1; 1949, c. 951, s. 1; 1957, c. 1240, s. 1; 1965, c. 630, s. 1; 1973, c. 476, s. 128; 1975, c. 571; 1979, c. 461,

ss. 1-4; 1983, c. 69, ss. 1-4; 1987, c. 430, s. 1; c. 827, s. 1; c. 879, s. 6.2; 1991, c. 528, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 901, s. 3; 2001-294, s. 1; 2001-486, s. 2.3(a); 2003-420, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2003

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HOUSE BILL 859
Committee Substitute Favorable 4/29/03
Third Edition Engrossed 5/1/03
PROPOSED SENATE COMMITTEE SUBSTITUTE H859-PCS70508-SW-81

Short Title: Board of Funeral Service. (Public)

Sponsors:

Referred to:

April 7, 2003

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE LAW CONCERNING THE ELECTION OF MEMBERS OF THE BOARD OF FUNERAL SERVICE AND TO ESTABLISH A NEW PROCESS WHEREBY MEMBERS ARE APPOINTED TO SERVE ON THE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-210.18 is repealed.

SECTION 2. Article 13A of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-210.18A. Board of Funeral Service created; qualifications; vacancies; removal.**

(a) The General Assembly declares that the practice of funeral service affects the public health, safety, and welfare and is subject to regulation and control in the public interest. The public interest requires that only qualified persons be permitted to practice funeral service in North Carolina and that the profession merit the confidence of the public. This Article shall be liberally construed to accomplish these ends.

(b) The North Carolina Board of Funeral Service is created and shall regulate the practice of funeral service in this State. The Board shall have nine members as follows:

(1) Four members appointed by the Governor from nominees recommended by the North Carolina Funeral Directors Association, Inc. These members shall be persons licensed under this Article.

(2) Two members appointed by the Governor from nominees recommended by the Funeral Directors & Morticians Association of North Carolina, Inc. These members shall be persons licensed under this Article.

(3) One member appointed by the Governor who is licensed under this Article and who is not affiliated with any funeral service trade association.

(4) One member appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate. This member shall be a person who is not licensed under this Article or employed by a person who is licensed under this Article.

(5) One member appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives. This member shall be a person who is not licensed under this Article or employed by a person who is licensed under this Article.

Members of the Board shall serve staggered three-year terms, ending on June 30 of the last year of the term or when a successor has been duly appointed, whichever is later. No member may serve more than two complete consecutive terms.

(c) Vacancies. – A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(d) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved."

SECTION 3. To establish staggered terms of the members of the Board of Funeral Service pursuant to G.S. 90-210.18A(b), two members appointed by the Governor from nominees recommended by the North Carolina Funeral Directors Association, Inc., shall serve two-year terms, and two members appointed by the Governor from nominees recommended by that Association shall serve three-year terms. One member appointed by the Governor from nominees recommended by the Funeral Directors & Morticians Association of North Carolina, Inc., shall serve a two-year term, and one member appointed by the Governor from nominees recommended by that Association shall serve a three-year term. The Governor shall appoint the member appointed by the Governor under G.S. 90-210.18A(b)(3) for a one-year term. The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint one member for a one-year term, and the General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint one member for a one-year term. After the staggered terms have been established, members appointed to the Board thereafter shall serve three-year terms.

SECTION 4. This act becomes effective January 1, 2005.